

No. 14204

United States
Court of Appeals
for the Ninth Circuit

JAMES M. FIDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

APR 5 1954

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

NELSON ROSEN, ESQ.,

RAYMOND C. SANDLER, ESQ.

For Respondent:

W. LEE McLANE, ESQ.

Tax Court of the United States

Docket No. 27910

JAMES M. FIDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1950

Apr. 26—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 26—Copy of petition served on General Counsel.

May 4—Request for hearing to be held in Los Angeles, California, filed by taxpayer. 5/11/50
Granted.

May 31—Entry of appearance of Raymond C. Sandler as counsel and to receive service of papers filed.

May 31—Answer filed by General Counsel.

June 8—Copy of answer served on taxpayer Los Angeles.

1951

Nov. 21—Hearing set February 4, 1952, Los Angeles.

1952

- Feb. 5, 6, 13—Hearing had before Judge Raum, on merits. Record to be left open for deposition of Mr. Bentel. Stipulation of facts filed 2/5/52. Supplemental stipulation of facts filed 2/13/52. Petitioner's brief due March 31/52. Respondent's brief due April 30/52. Petitioner's reply brief due May 20/52.
- Mar. 3—Transcript of hearing 2/5/52 filed.
- Mar. 3—Transcript of hearing 2/6/52 filed.
- Mar. 3—Transcript of hearing 2/13/52 filed.
- Mar. 27—Brief filed by taxpayer. Copy served.
- Apr. 22—Motion for extension to June 2, 1952, to file reply brief filed by General Counsel. 4/23/52 Granted.
- June 2—Answer brief filed by General Counsel.
- June 30—Reply brief filed by taxpayer. 7/1/52 Copy served.
- Nov. 21—Memorandum findings of fact and opinion rendered, Raum, Judge. Decision will be entered for the respondent. Copy served.
- Nov. 25—Decision entered, Raum, Judge, Div. 11.
- Dec. 15—Motion for reconsideration of opinion filed by taxpayer.
- Dec. 15—Motion for a full Court review filed by taxpayer. 1/3/53 Denied.

1953

- Jan. 6—Order that petitioner's motion of 12/15/52 is granted and a copy of said motion shall be served on respondent, further order, that respondent in this proceeding is granted leave to file, on or before 2/9/53, a reply to the "argument" which was incorporated in motion for reconsideration, entered. 1/7/53 Copy served.
- Jan. 21—Application for permission to file motion to vacate decision pending reconsideration of memorandum opinion, motion lodged, filed by petitioner. 1/23/53 Application granted.
- Jan. 23—Order, that decision entered November 25, 1952, is vacated and set aside entered. 1/26/53 Copy served.
- Feb. 9—Motion for extension to February 23, 1953, to file brief in answer to petitioner's argument filed by General Counsel. 2/10/53 Granted.
- Feb. 24—Reply brief filed by General Counsel.
- Sept. 25—Findings of fact and opinion rendered, Raum, Judge. Decision will be entered for the respondent. Copy served.
- Sept. 29—Decision entered, Judge, Raum, Div. 11.
- Dec. 18—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by taxpayer with affidavit of service by mail attached.

1953

Dec. 18—Proof of service by mail of petition for review filed.

Dec. 18—Designation of contents of record on review with affidavit of service by mail attached, filed by petitioner.

The Tax Court of the United States

Docket No. 27910

JAMES M. FIDLER

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (LA:IT:90D:CTF) dated January 31, 1950, and as a basis for his proceedings, alleges as follows:

I.

The petitioner is an individual whose present mailing address is 1759 N. Gower Street, Los Angeles 28, California. The returns for the years here involved were filed with the Collector for the Sixth District of California, Los Angeles, California.

II.

The Notice of Deficiency a copy of which is attached and marked "Exhibit A," is dated January 31, 1950.

III.

The taxes in controversy are income tax for the calendar year 1944 in the amount of \$7,316.60, income tax for the calendar year 1945 in the amount of \$10,293.79, and income tax for the calendar year 1946 in the amount of \$6,992.74.

IV.

The determination of taxes set forth in the said Notice of Deficiency is based upon the following errors:

A. The Commissioner erred: in determining that payments in the amount of \$9,000.00 made by petitioner during the calendar year 1944 to his former wife, Ruth Law Fidler, as alimony, support and maintenance, does not qualify as a proper deduction under the provisions of section 23(u) of the Internal Revenue Code; and in disallowing such payments as a deduction and in adding said amount of \$9,000.00 to petitioner's taxable income for the calendar year 1944.

B. The Commissioner erred: in determining that payments in the amount of \$9,600.00 made by petitioner during the calendar year 1945 to his former wife, Ruth Law Fidler, as alimony, support and maintenance, does not qualify as a proper deduction under the provisions of section 23(u) of the Internal

Revenue Code; and in disallowing such payments as a deduction and in adding said amount of \$9,600.00 to petitioner's taxable income for the calendar year 1945.

C. The Commissioner erred: in determining that payments in the amount of \$9,600.00 made by petitioner during the calendar year 1946 to his former wife, Ruth Law Fidler, as alimony, support and maintenance, does not qualify as a proper deduction under the provisions of section 23(u) of the Internal Revenue Code; and in disallowing such payments as a deduction, and in adding said amount of \$9,600.00 to petitioner's taxable income for the calendar year 1946.

D. The Commissioner erred: in determining that the loss sustained by petitioner in the calendar year 1945 in the amount of \$4,750.00 from the sale of books and manuscripts is a loss from the sale of capital assets held for more than six months and subject to the provisions of section 117(b) and (d) of the Internal Revenue Code; in refusing to determine such loss to be one from sale of property other than capital assets; and in refusing to allow such loss as a deduction in the amount of \$4,750.00 from petitioner's taxable income for the calendar year 1945 and in determining that petitioner was entitled to a deduction on account of said loss in only the amount of \$2,375.00.

E. The Commissioner erred in determining the net income of petitioner for the calendar year 1944 to be \$72,725.12 instead of \$63,725.12.

F. The Commissioner erred in determining petitioner's income tax liability for the calendar year 1944 to be \$45,398.95 instead of \$38,082.35.

G. The Commissioner erred in determining the net income of petitioner for the calendar year 1945 to be \$72,352.75 instead of \$60,003.50.

H. The Commissioner erred in determining petitioner's income tax liability for the calendar year 1945 to be \$45,371.31 instead of \$35,077.52.

I. The Commissioner erred in determining the net income of petitioner for the calendar year 1946 to be \$75,126.50 instead of \$65,900.75.

J. The Commissioner erred in determining petitioner's income tax liability for the calendar year 1946 to be \$42,703.85 instead of \$35,711.11.

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A. Petitioner and Ruth Law Fidler, also known as Roberta L. Fidler, were married on or about February 20, 1936.

B. Thereafter, and prior to February 4, 1944, unhappy differences arose between petitioner and said Ruth Law Fidler and they commenced to live separate and apart from one another.

C. On February 4, 1944, petitioner and said Ruth Law Fidler, under the name of Roberta L. Fidler,

executed a written agreement of settlement and separation, whereby, among other things, petitioner agreed to make periodic payments of money to said Ruth Law Fidler as alimony and for her future support and maintenance, that said payments would be made by petitioner on the first day of each calendar month thereafter to and including the 1st day of August, 1948, and that said monthly payments would be not less than \$500.00 per month and not more than \$800.00 per month, the exact amount of each payment to depend upon the amount of compensation to be thereafter received by petitioner pursuant to a certain radio contract under which petitioner was then engaged to render services and/or the continuance of said radio contract and/or petitioner's future employment under a similar radio contract, in accordance with a formula set forth in said agreement.

D. On March 20, 1944, the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine, ordered, adjudged and decreed that the marriage relationship then and theretofore existing between petitioner and said Ruth Law Fidler be dissolved and that said parties be restored to the status of single persons; that by the terms of said decree of divorce, said court confirmed, ratified, approved and adopted as a part of its decree the aforesaid settlement and separation agreement entered into between the parties on February 4, 1944. That as a part of its decree, said court ordered, adjudged and decreed that petitioner make payments to said Ruth Law Fidler for her support and maintenance, in terms as follows:

“It Is Further Ordered, Adjudged and Decreed, that defendant shall pay to plaintiff in accordance with the terms of said Settlement Agreement the sum of Eight Hundred (\$800.00) Dollars per month commencing forthwith and continuing for a period of four years and five months, the last monthly payment becoming due and payable on August 1, 1948, providing, however, that should defendant, at any time before August 1, 1948, not have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, monthly payments to the extent of the sum Three Hundred (\$300.00) Dollars of said sum of Eight Hundred (\$800.00) Dollars per month, shall be reduced in proportion to the amount of the reduction of his present radio contract, and should defendant have no radio contract at all, between the date hereof and said August 1, 1948, then monthly payments to the extent of the sum of Three Hundred (\$300.00) Dollars per month of said sum of Eight Hundred (\$800.00) Dollars per month, shall be waived and shall not be made to plaintiff by defendant, and defendant shall not be required at any future time to pay to plaintiff the balance of any reduced, or waived, payments hereunder.”

That your petitioner is the defendant referred to in said decree and order and that Ruth Law Fidler is the plaintiff referred to therein.

E. Pursuant to and subsequent to said decree of divorce, petitioner made periodic payments to said Ruth Law Fidler for her support and maintenance

during the calendar year 1944 in the total amount of \$7,200.00.

F. Pursuant to and subsequent to said decree of divorce, petitioner made periodic payments to said Ruth Law Fidler for her support and maintenance during the calendar year 1945 in the total amount of \$9,600.00.

G. Pursuant to and subsequent to said decree of divorce, petitioner made periodic payments to said Ruth Law Fidler for her support and maintenance during the calendar year 1946 in the total amount of \$9,600.00.

H. In 1937, petitioner entered upon and into the business of buying, selling, licensing and otherwise dealing in literary properties for financial profit. In order to engage in such business, and more particularly in order to have a stock of such properties to offer to prospective purchasers, petitioner in 1937 purchased motion picture and other literary rights in and to approximately 75 published novels and stage plays and approximately 2,000 original manuscripts, scenarios, and motion picture shooting scripts, at a cost of \$5,000.00. Petitioner thereafter offered to sell and attempted to sell from said stock of literary properties to motion picture producers and other purchasers and users of such properties in the theatrical, motion picture and radio industries but was unsuccessful in his efforts to obtain buyers therefor. In the calendar year 1945, petitioner sold his entire stock of literary properties, as aforesaid, for the

sum of \$250.00, thereby sustaining and incurring a loss in said business in the amount of \$4,750.00.

Wherefore, the petitioner prays that this Court may hear this proceeding and:

1. Determine that the Commissioner erred in his determinations as hereinbefore set forth;

2. Determine that there is no deficiency in petitioner's income tax for the calendar years 1944, 1945 and 1946; and

3. Grant such other relief as the Court may deem proper.

/s/ NELSON ROSEN,

Attorney for Petitioner.

ZAGON, AARON AND
SANDLER,

Of Counsel for Petitioner.

EXHIBIT A

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

Jan. 31, 1950.

Office of
Internal Revenue Agent in Charge
Los Angeles Division

LA:IT:90D:CTF

Mr. James M. Fidler,
1759 North Gower Street,
Los Angeles 28, California.

Dear Mr. Fidler:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, 1945 and 1946, discloses a deficiency of \$24,603.13, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington

25 D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates, 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner,

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in
Charge.

Enclosures :

Statement

Form of Waiver

Statement

LA:IT:90D:CTF

Mr. James M. Fidler
 1759 North Gower Street
 Los Angeles 28, California

Tax Liability for the Taxable Years Ended
 December 31, 1944, 1945 and 1946

Year	Deficiency
1944 Income tax	\$ 7,316.60
1945 Income tax	10,293.79
1946 Income tax	6,992.74
Total	<u>\$24,603.13</u>

In making this determination of your income tax liability careful consideration has been given to the reports of examination, copies of which were sent you on April 10, 1947; October 13, 1948, and February 3, 1949; to your protests dated June 10, 1947; December 10, 1948, and March 2, 1949; and to the statements made at the conferences held.

The amounts \$9,000.00, \$9,600.00 and \$9,600.00 claimed as deductions in your income tax returns for the taxable years 1944, 1945 and 1946, respectively, as alimony have been added to your taxable income for such years. It has been determined that said amounts do not qualify as proper deductions under the provisions of section 23(u) of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representative, Mr. Glenn Brownfield, 704 South Spring Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustment to Net Income
 Taxable Year Ended December 31, 1944

Net income as disclosed by return	\$63,725.12
Unallowable deduction:	
(a) Alimony deduction disallowed	9,000.00
Net income adjusted	<u>\$72,725.12</u>

Explanation of Adjustment

(a) This adjustment has been previously explained.

Computation of Alternative Tax
Taxable Year Ended December 31, 1944

Net income adjusted	\$72,725.12
Less: Excess of net long-term capital gain over net short-term capital loss	838.69
Ordinary net income	\$71,886.43
Less: Surtax exemptions	1,000.00
Balance (surtax net income)	\$70,886.43
Surtax on \$70,886.43	\$42,838.01
Ordinary net income	\$71,886.43
Less: Normal tax exemption	500.00
Balance subject to normal tax	\$71,386.43
Normal tax (3 per cent of \$71,386.43)	2,141.59
Partial tax	\$44,979.60
Plus: 50 per cent of \$838.69	419.35
Alternative tax	\$45,398.95

Computation of Tax
Taxable Year Ended December 31, 1944

Net income adjusted	\$72,725.12
Less: Surtax exemptions	1,000.00
Surtax net income	\$71,725.12
Surtax	\$43,517.35
Net income adjusted	\$72,725.12
Less: Normal-tax exemption	500.00
Net income subject to normal tax	\$72,225.12
Normal tax at 3%	2,166.75
Total normal tax and surtax	\$45,684.10
Alternative tax	\$45,398.95
Correct income tax liability	\$45,398.95
Income tax liability shown on return, account No. 3011985	38,082.35
Deficiency of income tax	\$ 7,316.60

Adjustments to Net Income
Taxable Year Ended December 31, 1945

Net income as disclosed by return	\$60,003.50
Unallowable deductions:	
(a) Alimony deduction disallowed	9,600.00
(b) Loss from sale or exchange of property other than capital assets eliminated	4,750.00
<hr/>	
Total	\$74,353.50
Decrease in income:	
(c) Net loss from the sale or exchange of capital assets allowed	2,000.75
<hr/>	
Net income adjusted	\$72,352.75

Explanation of Adjustments

(a) This adjustment has been previously explained.

(b) The loss from sale of Seelig Library claimed as a loss from sale of property other than capital assets has been eliminated due to adjustment (c) below.

(c) The ordinary loss claimed of \$4,750.00 from sale of Seelig Library of books and manuscripts has been determined to be a loss from the sale of capital assets held for more than six months and subject to the provisions of section 117(b) and (d) of the Internal Revenue Code. Computation of the adjustment of \$2,000.75 is shown below:

Total short-term capital loss as claimed in return	(\$ 790.00)
Total long-term capital gain as reported in return	1,790.75
Long-term capital loss determined from sale of Seelig Library (50% of \$4,750.00	(2,375.00)
<hr/>	
Net loss from the sale or exchange of capital assets	(\$1,374.25)
Net loss deductible in 1945 under section 117(d)	(\$1,000.00)*
Net gain reported	1,000.75
<hr/>	
Decrease in income	\$2,000.75

*The balance of the loss in the amount of \$374.25 constitutes a capital loss carry-over under the provisions of section 117(e), I.R.C.

Computation of Tax

Taxable Year Ended December 31, 1945

Net income adjusted	\$72,352.75	
Less: Surtax exemptions	1,000.00	
	<hr/>	
Surtax net income	\$71,352.75	
Surtax		\$43,215.73
Net income adjusted	\$72,352.75	
Less: Normal-tax exemption	500.00	
	<hr/>	
Net income subject to normal tax	\$71,852.75	
Normal tax at 3%		2,155.58
		<hr/>
Correct income tax liability		\$45,371.31
Income tax liability shown on return, account No. 90991345		35,077.52
		<hr/>
Deficiency of income tax		\$10,293.79

Adjustments to Net Income

Taxable Year Ended December 31, 1946

Net income as disclosed by return	\$65,900.75	
Unallowable deduction:		
(a) Alimony deduction disallowed		9,600.00
		<hr/>
Total		\$75,500.75
Decrease in income:		
(b) Net gain from the sale or exchange of capital assets decreased		374.25
		<hr/>
Net income adjusted		\$75,126.50

Explanation of Adjustments

(a) This adjustment has been previously explained.

(b) The net gain from the sale of capital assets reported in the amount of \$2,175.68 has been decreased, due to a capital loss carry-over from the year 1945, in the amount of \$374.25 allowed under the provisions of section 117(e) of the Internal Revenue Code.

Net long-term capital gain reported	\$2,175.68
Short-term capital loss allowed (as explained above)	374.25
	<hr/>
Net capital gain corrected	\$1,801.43

Computation of Alternative Tax
Taxable Year Ended December 31, 1946

Net income adjusted	\$75,126.50
Less: Excess of net long-term capital gain over net short-term capital loss	1,801.43
<hr/>	
Ordinary net income	\$73,325.07
Less: Exemptions	1,000.00
<hr/>	
Balance, subject to surtax and normal tax	\$72,325.07
Tentative surtax	\$41,833.55
Tentative normal tax at 3%	2,169.75
<hr/>	
Total tentative tax	\$44,003.30
Less 5%	2,200.17
<hr/>	
Partial tax	\$41,803.13
Plus: 50 per cent of \$1,801.43	900.72
<hr/>	
Alternative tax	\$42,703.85

Computation of Tax
Taxable Year Ended December 31, 1946

Net income adjusted	\$75,126.50
Less: Exemptions	1,000.00
<hr/>	
Balance, subject to surtax and normal tax	\$74,126.50
Tentative surtax	\$43,238.67
Tentative normal tax at 3%	2,223.80
<hr/>	
Total tentative tax	\$45,462.47
Less 5%	2,273.12
<hr/>	
Total normal tax and surtax	\$43,189.35
Alternative tax	\$42,703.85
Correct income tax liability	\$42,703.85
Income tax liability shown on return, account No. 3056288	35,711.11
<hr/>	
Deficiency of income tax	\$ 6,992.74

Duly verified.

Served April 26, ~~1952~~ 1950

Received and filed April 26, ~~1952~~ 1950, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I., II. and III.

Admits the allegations contained in paragraphs I, II and III of the petition.

IV.

A. to J., inclusive. Denies the allegations of error contained in subparagraphs A to J, inclusive, of paragraph IV of the petition.

V.

A. and B. Admits the allegations contained in subparagraphs A and B of paragraph V of the petition.

C. Admits that petitioner and Ruth Law Fidler, under the name of Roberta L. Fidler, executed a written agreement of settlement and separation dated February 4, 1944. Denies the remainder of the allegations contained in subparagraph C of paragraph V of the petition.

D. Admits that the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine, ordered, adjudged and decreed that the marriage relationship between petitioner and

said Ruth Law Fidler be dissolved and that said parties be restored to the status of single persons. Denies the remainder of the allegations contained in subparagraph D of paragraph V of the petition.

E. to H., inclusive. Denies the allegations contained in subparagraphs E to H, inclusive, of paragraph V of the petition.

VI.

Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT, ECC.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,

L. C. AARONS,
Special Attorneys, Bureau of
Internal Revenue.

Received and Filed May 31, 1950, T.C.U.S.

The Tax Court of the United States

Docket No. 27910

JAMES M. FIDLER

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PROCEEDINGS

Circuit Court of Appeals Court Room

Sixteenth Floor, Federal Building

Los Angeles, California

February 5, 1952—2:00 P.M.

(Met pursuant to notice.)

Before: Honorable Arnold Raum, Judge.

Appearances:

NELSON ROSEN,

Appearing for the Petitioner.

W. LEE McLANE, JR.,

Honorable Mason B. Leming, Acting Chief

Counsel, Bureau of Internal Revenue,

Appearing for the Respondent.

The Clerk: Docket 27910, James M. Fidler.

State your appearances for the record, please.

Mr. Rosen: Nelson Rosen for the Petitioner.

Mr. McLane: W. Lee McLane, Jr., for the Respondent.

The Court: You may proceed.

Mr. Rosen: Your Honor please, I believe that counsel for the government and I have been able to eliminate the necessity for awaiting the transcript of the proceedings to which we referred when your calendar was called the other day.

We have entered into a stipulation of facts, which likewise refers to various documents, which I believe will tend to shorten the trial of the case considerably.

Does your Honor desire an opening statement at this time?

The Court: If you care to make one, you may do so.

OPENING STATEMENT ON BEHALF OF THE PETITIONER

By Mr. Rosen:

I think that the petition on file indicates some degree of the nature of the questions which are posed. We have here a petition for redetermination of a proposed deficiency, which arises out of the refusal of the Bureau to allow certain deductions which the Petitioner took during the years 1944, 1945 and 1946, as alimony, [3*] pursuant to Sections 23(u) and 22(k) of the Internal Revenue Code.

An incidental question involved pertains to whether or not a loss which the Petitioner sustained in connection with the purchase and sale of a stock of literary properties should be allowed as an ordinary

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

business loss or should be limited to a capital loss.

The alimony question is the principal question involved. The deficiency is proposed with respect to three years, the years 1944, 1945 and 1946.

The facts briefly are, your Honor, that Mr. Fidler, the Petitioner, and his wife, former wife, I should say, Ruth Law Fidler, were married on or about February 20, 1936. Thereafter, and some time prior to February 4, 1944, unhappy differences arose between the parties and they separated. There was one minor child of the marriage, an adopted infant.

In August of 1943, an agreement of settlement and separation was entered into between Mr. Fidler and Mrs. Fidler, the terms of which were substantially that Mr. Fidler undertook to pay to his wife and deliver to her properties amounting to approximately \$20,000.00 in value, as her share of the property of the community.

In addition thereto he agreed to pay to her the sum of \$500.00 per month for a period of three years. And, likewise, agreed to pay to her an additional sum of \$500.00 [4] per month for an additional two years, provided she did not remarry during that last two years. The custody of the child was to be with Mr. Fidler exclusively.

Thereafter, shortly after the execution of that agreement, it was modified to eliminate the condition with respect to the payment of \$500.00 per month for the last two years of the five-year period contemplated by the original contract with the result that if Mrs. Fidler remarried, the \$500.00 per

month would still be paid for that remaining two years.

Thereafter, in December of 1943, at the request of Mrs. Fidler, still another amendment was made. The result of this amendment was that the custody of the child would be divided equally between Mr. and Mrs. Fidler, and during the six months' period of each year that the child remained with Mrs. Fidler, Mr. Fidler would pay to her support for the child in an amount designated.

Thereafter, and in February of 1944, still additional demands were made by Mrs. Fidler, with the result that the parties, through their respective counsel, entered into what I refer to as a final agreement between the parties.

In substance, your Honor, that agreement provided that in addition to the \$20,000.00 theretofore paid by Mr. Fidler to Mrs. Fidler as her share of the property, Mr. Fidler would transfer and assign to her cash and/or securities [5] in an additional amount of \$7,000.00, thereby making a total amount of \$27,000.00.

In addition to the agreement of Mr. Fidler to pay \$500.00 per month for approximately five years, as contemplated by the original agreement, Mr. Fidler undertook the additional obligation to pay an additional \$300.00 per month for a period of approximately, I think, 54 months from the date of that agreement provided that his compensation which he was then receiving under a radio contract was not reduced during that term.

That additional obligation to pay an additional

\$300.00 per month incidentally, was evidenced by a promissory note described in the agreement. The result of that agreement was, your Honor, that in any event Mrs. Fidler would be paid \$500.00 per month for her support and maintenance. If Mr. Fidler's compensation under his radio contract did not drop, she would be paid an additional \$300.00. If his compensation during that term were reduced, the \$300.00 would be reduced in proportion.

If the compensation were entirely eliminated, if, for example, he had no contract at all during that period of time, he would be under no obligation to pay her that \$300.00. With the result it was, in effect, an agreement to pay a minimum of five and a maximum of eight.

Shortly thereafter, Mrs. Fidler filed suit for [6] divorce in White Pine County, the State of Nevada. The case, of course, virtually went by default, although a formal appearance was entered on Mr. Fidler's behalf by some local attorney in the small town, the County Seat, where the action was filed. A decree of divorce was rendered in her favor on March 20, 1944.

For some reason, of which we have no knowledge, the Court, in accordance with the request of Mrs. Fidler, to grant her a divorce and approve the property settlement agreement, did grant a divorce, did grant to her the custody of the child, in accordance with the terms of the agreement, and did ratify, approve the agreement, the settlement agreement of the parties. And did direct Mr. Fidler to pay \$200.00 per

month for the support of the child in accordance with the terms of the agreement. And then computed——

The Court: That was over and above the \$800.00 you spoke of?

Mr. Rosen: Oh, yes. In addition to the \$800.00 per month, Mr. Fidler obligated himself to pay \$200.00 a month for the support of the child during the months the child was with Mrs. Fidler.

The decree was concluded by stating, the formal decree, "That the defendant shall pay to the plaintiff, in accordance with the terms of the said settlement agreement, the sum of \$800.00 a month, commencing forthwith and continuing [7] for a period of five years."

Shortly thereafter the Court ordered the decree be amended to comply with the terms of the agreement, and an amended decree of divorce was filed.

Pursuant to the decree and the agreement, Mr. Fidler, commencing on April 1, 1944, paid his wife the sum of \$800.00 per month through and including the month of December, 1946, in addition to the sums paid for the support of the child.

The Bureau has disallowed the deductions which Mr. Fidler took with respect to \$7200.00 in alimony paid for nine months during the year 1944 and 12 months in each of the years 1945 and 1946, upon the theory stated in the report of examination——

Mr. McLane: Is that the agent's report, Mr. Rosen?

Mr. Rosen: Yes. ——upon the theory stated in the agent's report, that the alimony payments made by Petitioner to Ruth Law Fidler during the years

1944, 1945 and 1946, "are disallowed as deductions to Petitioner, for the reason that the periodic payments were for a period of less than ten years."

That seems to have been the basis upon which those deductions were disallowed. And we, of course, contend, your Honor, that consistent with the views expressed in the Lee case and the Keith case, I believe, to the effect that where the total amount to be paid by the husband to the wife is [8] contingent upon the earnings of the husband, the sums paid and payable qualify as periodic payments, notwithstanding that the term of payment does not extend over a period of ten years. That, of course, is the principal issue involved.

In addition, with respect to the year 1945, there is this additional side issue presented by this case: Mr. Fidler has been a radio commentator and news reporter for a number of years. In addition thereto he has written a column that appears in some of the papers.

In 1937 he was approached by a friend of his, who is a literary property broker in the Hollywood area. A literary property broker is one who sells literary properties, books, stories and the like, to the studios. And he advised Mr. Fidler that a Mr. Selig had a large stock of literary properties, consisting of some 75 stage plays and novels and approximately 2,000 stories, motion picture rights thereto, which could be purchased for about \$5,000.00, and that he believed that there were some very good stories in this stock which could be resold to some of the studios. He felt that Mr. Fidler could make some money if

he wanted to buy this stock of literary properties and attempt to dispose of them piecemeal.

Mr. Fidler did and turned them over to this literary broker, and after the cost of \$5,000.00 had been recouped that they would share the profits equally. Unfortunately, although [9] they had some indications that some of the studio producers were interested in some of the stories, their efforts during this entire period of time, 1937 to 1945, proved to no avail, and finally in 1945 Mr. Fidler decided he would just sell it all, lock, stock and barrel, and did. He sold the entire stock for \$250.00.

We contend, under the circumstances, which the evidence will reflect, and under the statements I have outlined that Mr. Fidler was entitled to deduct the sum of \$4,750.00 for the loss occurring by the difference between what he paid and the amount he received for the stock as an ordinary loss.

The government takes the position it is a loss from ordinary capital assets.

That, in brief, your Honor, is the situation. I think we have a stipulation that will tend to expedite the trial of the case.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. McLane:

May it please the Court, this is a case involving the Petitioner's income tax for the years 1944, 1945 and 1946. The Commissioner of Internal Revenue in his Notice of Deficiency dated January 31, 1950, de-

terminated deficiencies in Petitioner's income tax of \$7,316.60 for 1944, \$10,293.79 for 1945, and \$6,992.74 for 1946. The [10] entire amount in each year is in controversy.

The deficiencies for 1944 and 1946 are based on the disallowance of alimony deductions of \$9,000.00 and \$9,600.00, respectively, while the 1945 deficiency is based on the disallowance of a \$9,600.00 alimony deduction and a \$4,750.00 ordinary loss deduction.

The question regarding the alimony deduction for each of the taxable years is whether the Petitioner is entitled to such deductions under Section 23(u) of the Internal Revenue Code.

The Court: I understood the Petitioner's counsel to state for the year 1944 only \$7,200.00 was involved.

Mr. McLane: Yes, your Honor. I understand there is a concession of \$1,800.00.

Mr. Rosen: Your Honor please, apparently when the return was originally filed for the year 1944, Mr. Fidler's accountant attempted to take \$9,000.00 as a deduction. It is my position, and I am ready to concede, your Honor, that in so far as any payments which were made prior to the decree of divorce on March 20, 1944, that they would not be deductible. We are accordingly limiting our prayer for relief to the sum of \$7,200.00 from April 1, 1944, through to December.

Mr. McLane: Continuing then for the Respondent, if the payments are not includable in the gross income of [11] Mr. Fidler's former wife, under Sec-

tion 22(k), the Petitioner is not entitled to deductions under Section 23(u).

Section 22(k) provides that "In the case of a wife who is divorced from her husband, under a decree of divorce, periodic payments received subsequent to such decree, in discharge of legal obligation, which, because of the marital relationship is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce, shall be includable in the gross income of such wife. However, installment payments discharging a part of an obligation, the principal sum of which is in terms of money or property, specified in the decree or instrument, shall not be considered periodic payments for the purposes of this subsection, unless such principal sum is to be paid within a period ending more than ten years from the date of the decree."

Respondent's contention is that the deductions claimed by Petitioner constitute installment payments of a principal sum which is specified in a decree. Therefore, they are not periodic payments required by Section 22(k).

The other issue involved, involving the claimed deduction of \$4,750.00 for 1945, is whether or not the Petitioner sustained an ordinary loss under Section 23(e) (1) or (2), when certain literary rights and original manuscripts were [12] transferred.

Respondent maintains that it is a loss from a sale of a capital asset held for more than six months and therefore subject to the limitations of Section 117 (b) and (d), of the Internal Revenue Code.

Mr. Rosen: Your Honor please, we have agreed upon a stipulation of facts. Mr. McLane advises me that the stipulation will have to be signed by the acting chief counsel, as I understand, but that he is willing for it to be now introduced in evidence and that the signature of Mr. Leming be later supplied. Is that correct?

Mr. McLane: That is correct. Your Honor, I have no authority to sign the stipulation. Mr. Neblett says if approved by me it will be signed by him. It was presented a few moments ago.

The Court: The stipulation will be received provisionally, on condition that the Respondent obtain the signature of the appropriate authorized officer of the Bureau of Internal Revenue.

Mr. Rosen: I have your assurance that will be done?

Mr. McLane: It will be signed.

Mr. Rosen: The stipulation refers, your Honor, to a duplicate original of the written agreement settlement and separation entered into by Mr. and Mrs. Fidler on February 4, 1944, as Exhibit 1-A. I have not yet marked that. [13]

I now offer into evidence, pursuant to the stipulation, an agreement entered into between Petitioner James M. Fidler and Roberta L. Fidler, also known as Ruth L. Fidler. This agreement was entered into on the 4th day of February, 1944. I ask it be marked as Exhibit 1-A.

The Court: I notice from the stipulation that there are four exhibits, ranging from 1-A through 4-D.

Mr. Rosen: Yes.

The Court: Simply give those to the Clerk. He will give them the appropriate identifying symbols.

Mr. Rosen: Your Honor, with respect to Exhibit 4-D, which is a detailed list of the literary properties purchased by the Petitioner in the year 1937, the list runs approximately 30 pages. My secretary was able to get about 25 of the pages completed. I still have about five pages to be added. I would like the permission and agreement of counsel—I understand he will consent to that——

Mr. McLane: No objection.

Mr. Rosen: ——I might add to the exhibit the additional pages which are now in the process of being copied.

The Court: You may give them to the Clerk when they are finished.

Mr. Rosen: Thank you, sir. I would like to call Mr. Fidler. [14]

Whereupon,

JAMES MARION FIDLER

the Petitioner, called as a witness for and on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name for the record.

The Witness: James Marion Fidler.

Direct Examination

By Mr. Rosen:

Q. Mr. Fidler, you are the Petitioner who appears herein, under the name of James M. Fidler? That is correct, is it not? A. Yes.

Mr. McLane: Excuse me, Mr. Rosen. No, never mind. Go ahead.

Q. (By Mr. Rosen): Mr. Fidler, in the stipulation of facts which counsel for the government has entered into with me, as your attorney, it is stated that "Petitioner paid to Ruth Law Fidler the sum of \$800.00 each month during the period commencing April 1, 1944, and ending December 31, 1946," which is the period of time involved in this particular proceeding.

What did those payments represent, Mr. Fidler?

A. Alimony and support.

Q. For your wife, for your former wife? [15]

A. Yes.

Q. Now, Mr. Fidler, in the year 1937, did you acquire a stock of literary properties from one William N. Selig? A. Yes.

Q. Did you pay Mr. Selig any consideration therefor? A. Yes.

(Testimony of James Marion Fidler.)

Q. Do you know how much you paid to him?

A. \$5,000.00.

Q. Can you refer to your check stubs and advise me the dates upon which that \$5,000.00 was paid?

A. At the time that the Agreement was signed, to purchase it from Colonel Selig—Mr. Selig—I made a payment of \$500.00 as a deposit against \$5,000.00; leaving \$4,500.00 due that was paid on July 26, 1937, by Check 6792.

Q. Did you thereafter make additional payments?

A. On August 2, 1937, I made another payment of \$2,000.00 on account, leaving a balance of \$2,500.00. My Check No. 6834.

On September 15, 1937, I paid Colonel Selig \$2,500.00 in full for the Selig library; my Check No. 6991.

Q. Now, Mr. Fidler, at the time that you purchased this stock of literary properties, which the stipulation describes as consisting of 75 published novels and stage plays and approximately 2,000 original manuscripts and scenarios and motion picture shooting scripts, what was your [16] principal business or occupation?

A. I was a radio commentator and newspaper columnist.

Q. How and for what reason did you buy this stock of literary property?

A. I bought them because Mr. Bentel, who is an agent and has long been a friend of mine, came to

(Testimony of James Marion Fidler.)

me with the presentation of the idea that Colonel Selig, who was in failing health, was ready to sell some of his properties at what Mr. Bentel believed was quite a reasonable price, because among them were a number of properties he thought were quite good, which we, as a partnership, might be able to sell to studios and thereby earn a profit.

Q. Did you then, pursuant to Mr. Bentel's suggestion, buy the stock of properties from Colonel Selig? A. Yes.

Q. You mentioned something about a partnership. Actually, you didn't form a formal partnership?

Mr. McLane: Excuse me, your Honor. I object to the form of the question. I think that is a little too leading.

Mr. Rosen: I am sorry.

The Court: If you will, attempt not to lead the witness.

Mr. Rosen: All right. [17]

Q. (By Mr. Rosen): Mr. Fidler, you referred to a partnership. What sort of an understanding, or what was the sum and substance of your understanding with Mr. Bentel, with respect to his assistance to you in disposing or selling individual items from the stock of literary properties?

A. Mr. Bentel was to conduct a campaign to sell those stories, which he believed—or books or plays—which he believed were available to any or all studios on a basis that I was to receive back from the sale of any or some of the properties my

(Testimony of James Marion Fidler.)

investment. ^{After} ~~Therefore~~, we were to divide the returns fifty-fifty.

The Court: Was that understanding reflected in any written agreement between you?

The Witness: Not to my knowledge, sir. We were pretty long time friends.

Q. (By Mr. Rosen): Mr. Fidler, did you purchase any of these properties with the intent or purpose of using them in your work as a commentator or columnist? A. No.

Q. Do you know if Mr. Bentel, after you had purchased the properties, made efforts to sell various books and stories to some of the motion picture studios? A. Yes, we both did. [18]

Q. Were you successful in selling even a single book up to 1945, when you sold the stock?

A. No.

Q. You did have prospects, but were unable to make any sale? A. That is right.

Q. Now, in connection with this group of literary properties, Mr. Fidler, were there any physical objects, anything of a material nature, which were turned over to you at the time that Colonel Selig assigned the property to you? Did you receive books or manuscripts in the physical form?

A. Yes, there was quite a batch of them.

Q. These books and manuscripts, motion picture manuscripts—were there motion picture manuscripts also? A. Yes.

Q. Were those maintained by Mr. Bentel in his

(Testimony of James Marion Fidler.)

offices and place of business for purposes of display, Mr. Fidler, to prospective customers and persons who might be interested in buying individual manuscripts and stories?

A. A very careful tabulation was made of them and kept on file, and they themselves were on display in his offices.

Q. As I understand it, in 1945, to and including 1945, the date upon which you sold the entire stock, you had been unsuccessful in selling any book and you sold the entire [19] stock, everything which you had acquired from Mr. Selig, for the sum of \$250.00

A. That is right.

Mr. Rosen: I have no further questions.

Mr. McLane: May I remain seated, with the Court's permission?

The Court: You may.

Cross-Examination

By Mr. McLane:

Q. Mr. Fidler, did you in 1943 hire an attorney in Los Angeles by the name of George Breslin, to work out a property settlement between the former Mrs. Fidler and yourself?

A. No, I didn't.

Q. Did you pay him a fee of \$1,350.00 for work performed for Mrs. Fidler?

A. Yes, I did.

Q. Were the results of his work the Agreement dated August 20, 1943, between your former wife and yourself, which is now in evidence as part of the Stipulation? That was the first agreement, was it not?

A. Yes.

(Testimony of James Marion Fidler.)

Q. Was that the result of his work?

A. Yes.

Q. Was that agreement canceled on February 4, 1944, [20] when an additional \$7,000.00 was provided for in the February 4th agreement?

Mr. Rosen: Excuse me, Mr. McLane. Have you finished your question? I would like to interpose an objection.

Mr. McLane: Surely.

Mr. Rosen: I object to that, your Honor, on the ground that the document now in evidence, the Agreement of February 4, 1944, speaks for itself.

Mr. McLane: I withdraw the question.

Q. (By Mr. McLane): Was Mr. C. A. Eddy the attorney you hired in Nevada to represent you in the divorce proceeding brought by your former wife? A. Yes.

Q. Did you actually appear in the Nevada court during the divorce proceedings? A. No.

Q. Was Mrs. Fidler represented by different attorneys in that divorce proceeding in Nevada?

A. Yes.

Q. Do you remember who they were?

A. I believe—in fact, I know one was named Rawley, Paul Rawley, I believe. I don't know his partner's name.

Q. I hand you a copy of the original divorce decree filed on May 6, 1944, dated March 20, 1944, which is now in [21] evidence as a part of the Stipulation, Mr. Fidler, and I will ask you to turn to the next to the last paragraph and read it, please.

(Testimony of James Marion Fidler.)

A. You want me to read that aloud?

Q. Yes, please.

A. "It is further ordered, adjudged and decreed that the defendant shall pay to the plaintiff, in accordance with the terms of said settlement agreement, the sum of \$800.00 per month, commencing forthwith and continuing for a period of five years."

Q. Now I hand you a copy of the amended decree of divorce, dated March 20, 1944, and filed November 16, 1944, which is now in evidence as a part of the Stipulation, and I will ask you to read the last paragraph on the first page.

Mr. Rosen: Just a moment, please. I am going to object, your Honor. The document speaks for itself.

Mr. McLane: Your Honor, I am trying to get a little continuity in my question. I want to ask Mr. Fidler a question after these two paragraphs have been set forth.

Mr. Rosen: I see no reason to require Mr. Fidler to read the documents out loud, your Honor.

The Court: Well, it is a mere quibble. The document does speak for itself.

Mr. Rosen: Yes. [22]

The Court: If you care to you can direct Mr. Fidler's attention, and let him read it to himself.

Mr. McLane: I will withdraw the question.

Q. (By Mr. McLane): Read it to yourself, Mr. Fidler, for a second.

A. (Witness complies.)

Q. Is the effect of the second decree, Mr. Fidler,

(Testimony of James Marion Fidler.)

to provide that \$300.00 a month would be contingent upon your being employed under a radio contract?

Mr. Rosen: Excuse me, please. I object to that, your Honor, as calling for a conclusion of the witness. That is one of the issues to be decided by the Court. The document speaks for itself.

The Court: The effect of this paragraph is a legal question, not one that turns on the testimony of this witness.

Mr. McLane: I withdraw the question, your Honor.

Q. (By Mr. McLane): Mr. Fidler, in view of the fact that the settlement agreement of February 4th was made a part of the original decree, why did you direct Mr. Eddy, your attorney, to petition for an amended decree, which was filed six months later?

Mr. Rosen: Just a moment. I am going to object to that, your Honor, on the ground there is nothing in [23] evidence to show that Mr. Fidler directed Mr. Eddy to apply for an amended decree.

Mr. McLane: I withdraw the question.

Q. (By Mr. McLane): Did you direct Mr. Eddy to apply for an amended decree of divorce?

A. I did not.

Q. Do you know who did?

A. Yes. Mr. Vincent Hickson. I don't know his initial. Vincent Hickson in Los Angeles.

Q. He was your attorney at the time?

A. Yes.

(Testimony of James Marion Fidler.)

Q. Was he your tax attorney?

A. They have tax offices. I have never had a tax attorney in that sense. I have an accountant.

Q. Did Mr. Glenn Braumfield, your tax advisor, suggest the advisability of your amended decree?

A. Well——

Mr. Rosen: Just a moment. I object to that, your Honor, as being wholly immaterial and irrelevant to the issues involved. Certainly, the parties had a right, under the advice of counsel, to set up their agreement in such form as they saw fit.

The Court: What is the purpose of the question, Mr. McLane? [24]

Mr. McLane: Your Honor, I was trying to find out why the decree was amended. There is a change in the wording of the original decree, as compared to the amended decree.

The Court: Well, there is more than a change in the wording, it seems to me.

Mr. McLane: There is a change in substance.

The Court: The original decree provided for a flat sum of \$800.00 a month, whereas the——

Mr. McLane: For five years.

The Court: For five years. Whereas, the amended decree not only speaks of the \$800.00 a month, but provides for scaling it down by \$300.00 in specified circumstances. Perhaps that was all incorporated by reference in the original decree; I don't know. The original decree referred by reference to the original agreement.

(Testimony of James Marion Fidler.)

Mr. Rosen: That is correct, your Honor.

The Court: I don't quite see what you are driving at, Mr. McLane.

Mr. McLane: I am not sure yet, your Honor, that the amended decree was filed after notice had been given to the Petitioner's spouse. I am trying to find out whether this decree was filed upon petition of Mr. Fidler's counsel only, and whether or not thought was given to his former wife at the time the decree was issued. This is a decree of [25] divorce, and I am wondering——

The Court: Are you suggesting the possibility that it may be collaterally attacked for that reason?

Mr. McLane: No. I am wondering, your Honor, whether or not the amended decree of divorce is a valid decree insofar as the Commissioner of Internal Revenue is concerned, unless it is shown by taxpayer Petitioner in this case that the second decree, that is, the amended decree, was filed pursuant to petition by both taxpayer and his former wife.

It seems to me that the second decree modifies the right of former Mrs. Fidler.

Mr. Rosen: Mr. McLane, I might shorten this somewhat by stating to you that under my questioning of Mr. Fidler he has no knowledge whatsoever, no personal knowledge whatsoever of what transpired in the Nevada action. I don't think he could help you on that. If you want to pursue it, I have no objection.

Q. (By Mr. McLane): Then I will ask the

(Testimony of James Marion Fidler.)

question again, Mr. Fidler. Do you know whether your wife was represented in the Nevada proceeding at the time the amended decree was petitioned for? A. No, I do not.

Q. During 1944, 1945 and 1946, were you employed as a radio commentator? A. Yes. [26]

Q. During all of each year? A. Yes.

Q. Were you so employed prior to 1944?

A. The question is a little ambiguous. Part time I was and part time I wasn't.

Q. Which part of the years——

A. It would be difficult to find dates. There was a period, for example, about 1940, '41, '42, in which I was not employed at all on radio. My contract with one company ran out and I got no contract.

Q. What was the main source of your income during those years? A. Newspaper column.

Q. Prior to 1941, were you on the radio?

A. Yes.

Q. For how many years?

A. About eight years. In a sense, the first couple of years of that were, I suppose you would call, apprenticeship. I worked without salary, to become established.

Q. So from about 1933 to 1941 you were continuously employed as a radio commentator?

A. No, not continuously. There were periods when I started—You asked about when I started in 1933?

Q. During that period of 1933 to 1941, how

(Testimony of James Marion Fidler.)

many years were you employed as a radio [27] commentator? A. I don't know.

Q. How about 1937?

A. I believe I was employed—you are asking me questions that I am not positive of, but I had a contract with Proctor & Gamble for several years. That contract ended and I worked for a short period for a company named Tayton, that went broke during the war.

I don't remember what year later on I signed with the Carter company. Prior to my contract with Proctor & Gamble, I had worked for a short period for Luden's Cough Drops, and prior to that——

Q. Let's take it year by year.

A. I can't tell you year by year; they don't go by years.

Q. During 1937 were you employed as a radio commentator? A. I am quite sure I was.

Q. Were you also employed as a newspaper columnist during 1937? A. Yes.

Q. How about 1938? A. Yes.

Q. '39? A. Yes, I think so.

Q. 1940? [28]

A. To my recollection, yes. Somewhere in that period my contract ran out and I did not work for quite a while.

Q. During those years was the main source of your income derived from your radio program and your newspaper column?

A. Radio, I would say. Newspaper was comparatively small.

(Testimony of James Marion Fidler.)

Q. I hand you a copy of a quitclaim deed, which is now in evidence as a part of the Stipulation, Mr. Fidler, and ask you to examine it briefly.

A. You say examine it. Do you want me to read it?

Q. Just look it over rather briefly.

The Court: What part of the Stipulation are you referring to?

Mr. McLane: I don't know the number of that. They weren't numbered.

Mr. Rosen: The quitclaim deed, I believe, Mr. McLane, is attached as Exhibit D to the property settlement agreement now in evidence as Exhibit 1-A. It is clipped to that document.

The Court: An exhibit to an exhibit.

Mr. Rosen: Yes, your Honor.

Mr. McLane: I do not have them numbered.

Mr. Rosen: I might make this statement, with Mr. McLane's consent: In the final agreement of February 4, [29] 1944, each of the previous agreements entered into between the parties were attached as exhibits for the purpose of bringing the entire thing into the form of one document, your Honor.

Q. (By Mr. McLane): Mr. Fidler, what was the fair market value of the first piece of property listed in that quitclaim deed as of August 20, 1943?

A. I haven't the slightest idea.

Mr. Rosen: I object to that as being incompe-

(Testimony of James Marion Fidler.)

tent and irrelevant; not bearing on the issues in this case.

Mr. McLane: I am trying to find out, your Honor, whether or not the property settlement as of August 20, 1943, which is later incorporated in the February 4, 1944, agreement, isn't, in effect, simply a property settlement, pure and simple, and whether or not the government is bound by the characterization of the payments under the promissory notes, as alimony, since the government wasn't a party to the agreement and is not bound by the parol evidence rule. However, if Mr. Fidler can't make any kind of an estimate——

The Court: The witness has already answered he doesn't know.

Q. (By Mr. McLane): Well now, Mr. Fidler, isn't it a fact that each of the pieces of real estate described in that deed were [30] community property and owned by Mrs. Roberta Fidler and yourself? A. No.

Q. Why did you have her sign a quitclaim deed?

A. I didn't prepare the quitclaim deed. This was prepared by an attorney. I don't know the whys or wherefores. I say my no rather broadly. I am of the opinion these pieces of property—this is a long time that you are taking me back—are the house in which we lived and which I had owned since 1930 or '31. I am only guessing at part of that.

Q. Will you turn, Mr. Fidler, to the February 4, 1944, agreement, which is in evidence now as a part of the Stipulation, as Exhibit 1-A, and turn

(Testimony of James Marion Fidler.)

to page 9 of the February 4th agreement between yourself and Mrs. Fidler, and to the eighth paragraph? Will you examine that paragraph briefly?

A. Just that one or——

Q. Just that one paragraph. Can you tell me upon whose advice that paragraph was inserted in the agreement? Was that the advice of Mr.—What was your attorney's name?

Mr. Rosen: To which I object as being wholly incompetent and irrelevant. I don't see where it has any bearing on the issues involved in this case. I think all counsel know that attorneys who represent parties in proceedings of this kind ordinarily insert such provisions and are [31] necessary and advisable for the protection of the rights of their clients, as well as to express the agreement the parties are reaching themselves in the matter.

The Court: What is the purpose?

Mr. McLane: I am trying to find out who was the counsel for Mr. Fidler at the time the February 4th agreement was drawn up and who was the counsel for Mrs. Fidler at that time and who paid the fees of both of them.

Mr. Rosen: I will advise you of that fact.

Mr. McLane: All right.

Mr. Rosen: In the agreement itself, Mr. McLane, if you will note on page 17, it bears the signature—the duplicate original now in evidence as Exhibit 1-A bears the signature of Vincent C. Hickson, as attorney for James M. Fidler, and Mr. Jerry Geisler as attorney for Mr. Fidler's wife.

(Testimony of James Marion Fidler.)

Mr. McLane: The agreement provides that Mr. Fidler paid the fee of Mr. Geisler.

Mr. Rosen: That happens to be the standard practice and custom in this locality.

Q. (By Mr. McLane): Now, Mr. Fidler, you testified, I believe, that in 1937 you acquired certain manuscripts and literary properties from a Mr. Selig. Do you keep any canceled checks?

A. I don't believe I have any canceled checks. I [32] keep them until they are outlawed, as it were. I do keep my stubs.

Q. Did you get a bill of sale for the property which you purchased from Mr. Selig?

A. I would presume so; I haven't got it.

Q. You don't have it in court? A. No.

Q. Now, at the time that you purchased the property rights in 1937, you were a radio commentator and newspaper columnist? A. Yes.

Q. Did you ever use any of the materials in any of these magazine story manuscripts in your column or for a manuscript on your radio program?

A. No.

Q. You testified, I believe, that certain prospects were approached regarding the sale of these literary properties. Can you name a few?

A. I don't know that I could specify with stories, to which studios. There were several stories involved, several books involved, and some of them were hot and some were cold. One in particular that was hot, that we thought was sold, was a book

(Testimony of James Marion Fidler.)

called "Under Two Flags." I believe that was the title.

The book called "Under Two Flags," Mr. Bentel and [33] I both believed that the sale—and I think the sale was to have been to RKO, we both believed the sale was in the bag. About that time another studio made a motion picture, which they titled "Under Two Flags," and it kayoed, or whatever you want to call it—it stopped our sale.

We tried to take action to preserve our title, but were unable to.

Q. Did you ever sell a story or manuscript to any studio or any individual prior to 1937?

A. I don't believe I ever sold anything of any sort to any studio, except my personal services and acting.

Q. Either before or after 1937?

A. I don't know about before 1937. I have been in Hollywood since 1919, connected with the motion picture business.

Q. This is the only sale of any stories or manuscripts you have ever participated in, is that correct?

A. To my knowledge, that is correct.

Mr. McLane: No further questions, your Honor.

Mr. Rosen: Your Honor please, I have no further questions of Mr. Fidler. Just one moment, please.

Mr. McLane, if you desire, for reference or utilization in the trial of this action, what purports to be a copy of the assignment from Mr. Selig to Mr.

(Testimony of James Marion Fidler.)

Fidler—I cannot vouch for its veracity, however. For that reason I [34] haven't introduced it in evidence. We don't have the original. It is a copy. If you would like to refer to it and use it, you may do so.

Mr. McLane: I will just do so. Just one further question, your Honor, if I may.

Q. (By Mr. McLane): Whom did you sell the stories and manuscripts to, Mr. Fidler?

A. Eric Ergenbright.

Mr. McLane: That is all.

(Witness excused.)

Mr. Rosen: The only other witness I had in mind calling was Mr. Bentel. Unfortunately, I was unable to reach him during the noon recess, during the two-hour recess, when I was notified the case would be heard this afternoon.

If I may confer with Mr. McLane a moment, perhaps we might stipulate as to the effect of his testimony and thereby expedite this matter. May I have a moment with which to confer with Mr. McLane?

The Court: We will have a recess at this time.

(Short recess taken.)

Mr. McLane: May I call Mr. Fidler as my witness, to ask one further question, please?

The Court: Yes. [35]

Whereupon,

JAMES MARION FIDLER

recalled as a witness for and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McLane:

Q. Mr. Fidler, is Mr. Ergenbright an employee of yours, or was he at the time you sold the manuscripts, and so forth, to him? A. Yes.

Q. How long had he worked for you?

A. Without referring to records, I wouldn't be able to say. He has worked for me a number of years.

Mr. McLane: That is all.

Mr. Rosen: I have no questions, your Honor.

(Witness excused.)

Mr. Rosen: The Court please, we have one additional witness only at this time, a Mr. Bentel, the literary property broker, whose name has been referred to in the testimony.

I have been attempting to contact him since about 12:00 o'clock noon today. I have been unable to reach him. His testimony should take only five or ten minutes.

I wondered if the Court could accommodate us by [36] permitting us to contact him and bring him in in the morning for about ten minutes, and put on his testimony.

Mr. McLane: No objection, your Honor.

Mr. Rosen: Do you have any objection to that?

Mr. McLane: None whatsoever.

The Court: Very well, I will keep the proceedings open until tomorrow morning.

Mr. Rosen: Thank you, sir.

The Court: Can you be ready to begin at a quarter to 10:00?

Mr. Rosen: I will do my utmost, if I can contact the gentleman this afternoon. For some reason or other I have been unable to reach him at his office.

I should like to ask of the Court, in the event I can't contact him this afternoon or evening, would you like for me to advise you prior to tomorrow morning?

The Court: Well, I will be here tomorrow morning. We will call this case at 9:45.

Mr. McLane: While Mr. Fidler is still on the stand, before we start again tomorrow, may I have these income tax returns identified and offered in evidence, out of order?

Mr. Rosen: I have no objection. [37]

Whereupon,

JAMES MARION FIDLER

recalled as a witness for and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. McLane:

Q. Will you examine the income tax return I hand you, Mr. Fidler, for the year 1944, and tell the Court whether or not that is your signature at

(Testimony of James Marion Fidler.)

the bottom of the first page? A. Yes, it is.

Mr. McLane: Now I offer in evidence as Respondent's Exhibit E, an income tax return for the year 1944, for the Petitioner James M. Fidler.

Will you agree, Mr. Rosen, these are authentic returns?

Mr. Rosen: I haven't had an opportunity to look at them yet. If you will permit me to, I will glance at them.

Mr. McLane: Yes.

Mr. Rosen: I will concede that those are the returns filed by the Petitioner.

Mr. McLane: I now offer as Respondent's Exhibit next in order the income tax returns for 1944, 1945 and 1946 for the Petitioner James M. Fidler, and ask the Court leave [38] to withdraw them and have them photostated and returned to the record.

The Court: I have already received the returns for 1944. I will receive in evidence the returns for 1945 and 1946.

The Clerk: Respondent's Exhibits F and G.

(The documents above referred to were received in evidence and marked Respondent's Exhibits E, F and G.)

The Court: Counsel has permission to withdraw the returns, for the purpose of photostating.

Mr. McLane: Thank you, your Honor.

(Witness excused.)

The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

Mr. Rosen: As I understand, your Honor, then we will reconvene at 9:45 in the morning?

The Court: 9:45.

Mr. Rosen: Thank you, sir. May Mr. Fidler be excused?

Mr. McLane: Yes.

The Court: Yes, he may be excused.

(Whereupon, at 3:25 o'clock p.m., an adjournment was taken until 9:45 o'clock a.m., Wednesday, February 6, 1952.) [39]

February 6, 1952

The Clerk: Docket No. 27910, James M. Fidler.

Mr. Rosen: It has been agreed with the Petitioner and the Respondent that the document now in evidence as Exhibit No. 1-A may be withdrawn and in lieu thereof a conformed typewritten copy of said document may be introduced as Exhibit 1-A. Is that agreeable?

Mr. McLane: No objections.

The Court: You may substitute the copy for the original which has been previously lodged with the Clerk.

Mr. Rosen: In my opening statement I indicated to the Court that I was relying, in support of the Petitioner's position with respect to the deductibility of alimony payments involved herein, upon two cases. I referred to one as the Keith case. I should like to correct that. The proper title of

this case is Roland Keith Young, petitioner, vs. Commissioner of Internal Revenue, reported in 10TC724. The other case to which I made reference was John H. Lee, petitioner, vs. Commissioner of Internal Revenue, 10TC834.

If your Honor please, Mr. Bentel, the witness whose testimony I should like to introduce in connection with the capital assets or ordinary loss transactions involved in this matter, is presently ill, and I should like to move the Court to permit me to introduce his testimony one week from today at 9:45 a.m. [42]

The Court: The clerk will call this case next Wednesday morning at 9:45 a.m.

Mr. Rosen: I have nothing further to present at this time.

Mr. McLane: I have nothing, your Honor.

(Whereupon, at 10:30 o'clock a.m., an adjournment was taken until 9:45 o'clock a.m., Wednesday, February 13, 1952.) [43]

February 13, 1952

The Clerk: Docket No. 27910, James M. Fidler.

Mr. Rosen: Your Honor please, in this matter, during the testimony of Mr. Fidler last week, some question was raised concerning whether or not his wife had knowledge of the amendment of the divorce decree.

Since that time I have succeeded in my efforts to locate certain correspondence which passed be-

tween her attorneys and Mr. Fidler's attorney here in Los Angeles. I have exhibited that correspondence to opposing counsel and we have entered into a supplemental stipulation of facts, which I would like to file at this time, and I should also like to introduce as Petitioner's Exhibits 5 through 12, both inclusive, certain letters attached to the Stipulation.

The Court: The Stipulation and accompanying exhibits will be received.

Mr. Rosen: The Court kindly continued this matter until this morning, to enable the Petitioner to offer the testimony of one Mr. Bentel, who was ill last week.

I am sorry to state Mr. Bentel's illness has apparently become worse. He is now in the hospital and unable to appear today.

Counsel for the government has agreed, subject to the Court's approval, that Petitioner may now rest its case, with the understanding that if the deposition of Mr. [46] Bentel may be taken between the present date and the dates for filing of briefs in this matter, we would be permitted to file his deposition with the Court. I don't want to hold the case open, your Honor. I would like to submit the case at this time, with that understanding, if agreeable with the Court.

The Court: The Court will receive the deposition of that witness within the next 45 days.

Mr. Rosen: Thank you, sir.

The Court: You rest?

Mr. Rosen: Yes, with that understanding, your Honor, I am prepared to rest, and do rest.

Mr. McLane: The Respondent rests, your Honor.

The Court: Very well. The case is submitted subject only to the receipt of the deposition. Petitioner's brief will be due in 45 days.

Mr. McLane: Excuse me. May we have briefs under the rules, simultaneous briefs, in this case?

The Court: In view of the fact that all of the facts have not been stipulated, I prefer consecutive rather than simultaneous briefs.

Respondent's brief will be due 30 days after Petitioner's. Petitioner may reply 20 days after receipt of Respondent's brief.

Mr. Rosen: Thank you.

(Whereupon, at 10:20 o'clock a.m., Wednesday, February 13, 1952, the hearing in the above-entitled matter was closed.)

Filed March 3, 1952, T.C.U.S. [47]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

The parties to this proceeding, through their respective counsel of record, hereby stipulate that the following facts are true and may be found as facts by the court, subject to the right of either party to enter objections on the grounds of relevancy or materiality, and the right of either party to present other items of proof, either related or

unrelated to the facts herein stated but not inconsistent therewith:

I.

The petitioner is an individual whose present mailing address is 1759 N. Gower Street, Los Angeles 28, California. The returns for the years here involved were filed with the Collector of Internal Revenue for the Sixth District of California, Los Angeles, California.

II.

The taxes in controversy are income tax for the calendar year 1944 in the amount of \$7,316.60, income tax for the calendar year 1945 in the amount of \$10,293.79, and income tax for the calendar year 1946 in the amount of \$6,992.74.

III.

Petitioner and Ruth Law Fidler were married on or about February 20, 1936. Ruth Law Fidler was also known as and used the names "Roberta Law Fidler" and "Roberta L. Fidler," and wherever the names "Ruth Law Fidler," "Roberta Law Fidler," and "Robert L. Fidler" appear in this proceeding, such names refer to one and the same person.

IV.

Following the marriage between petitioner and Ruth Law Fidler in 1936 and prior to February 4, 1944, unhappy differences arose between petitioner and said Ruth Law Fidler, and they commenced to live separate and apart from one another.

V.

On February 4, 1944, petitioner and said Ruth Law Fidler, under the name of Roberta L. Fidler, executed a written agreement of settlement and separation. A duplicate original of said written agreement of settlement and separation is hereto attached, marked "Exhibit 1-A," and made a part hereof by reference as if herein fully set forth.

VI.

In 1944, Ruth Law Fidler, as plaintiff, instituted an action in the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, against petitioner as defendant, wherein said Ruth Law Fidler prayed that she be granted a decree of divorce from the petitioner and that the agreement of settlement and separation aforesaid be approved by the court. Said action appears in the records of said court as Case No. 4771.

VII.

Said divorce action was tried in said court on March 20, 1944, and a decree of divorce was rendered in favor of said Ruth Law Fidler and against petitioner. Thereafter, on May 6, 1944, there was filed in said court a formal decree of divorce, a true and correct copy of which is hereto attached, marked Exhibit "2-B," and made a part hereof by reference.

VIII.

Thereafter, on September 18, 1944, upon application of Clarence A. Eddy, attorney for petitioner

in said action, the court ordered that the decree of divorce be amended to recite correctly the terms and provisions of the agreement of settlement between Ruth Law Fidler and petitioner, and on November 16, 1944, there was filed in said court an amended decree of divorce, a true and correct copy of which is hereto attached, marked Exhibit "3-C," and made a part hereof by reference.

IX.

That petitioner is the defendant referred to in said decree, and Ruth Law Fidler is the plaintiff referred to therein; that the written agreement of settlement and separation, a duplicate original of which is attached hereto and marked Exhibit "1-A," is the Settlement Agreement referred to in said decree.

X.

Said decree, as amended, remained in full force and effect during the years 1945 and 1946.

XI.

That on and prior to March 20, 1944, petitioner had paid, transferred and assigned to Ruth Law Fidler all monies and properties due to Ruth Law Fidler under the terms of said agreement of settlement and separation, and had paid all monies required to be paid to her attorneys, and had made all payments to her which had become due and payable to her pursuant to the terms of the promissory notes referred to and described in said agreement. That subsequent to March 20, 1944, and to

and including December 31, 1946, petitioner made payment to Ruth Law Fidler of all sums which he was obligated to pay to her for the care, support and maintenance of the minor child of the parties, under the terms of said agreement and decree. That in addition to the foregoing, petitioner pursuant to the terms of said agreement and decree paid to Ruth Law Fidler the sum of \$800.00 each month during the period commencing April 1, 1944, and ending December 31, 1946.

XII.

That on February 4, 1944, and on March 20, 1944, petitioner's principal business was that of a radio commentator and reporter; that the "radio contract" referred to in the agreement and amended decree was a contract which was in force on February 4, 1944, and March 20, 1944, between petitioner and the sponsor of a weekly radio broadcast program under which petitioner was engaged to and had agreed to render his services as a commentator and reporter on said weekly radio program; that the term of said radio contract was twenty-six weeks, subject to the option of the sponsor to renew and extend said contract of employment for additional, successive terms of twenty-six weeks duration. That during the period from February 4, 1944, to December 31, 1946, said sponsor exercised its option to renew and extend said contract with petitioner, and petitioner remained continuously employed by said sponsor during said period. That during said period, petitioner received under said

contract and the renewals and extensions thereof a monthly sum equal to the monthly sum which he was receiving under said radio contract on February 4 and March 20, 1944.

XIII.

On July 31, 1937, one William N. Selig assigned and transferred to petitioner all of said Selig's literary rights, motion picture rights and other property rights, of every kind and nature, in and to approximately seventy-five published novels and stage plays, and approximately two thousand original manuscripts, scenarios, and motion picture shooting scripts. In the calendar year 1945, petitioner sold all of the rights, titles and interests which he had acquired from said William N. Selig, as aforesaid, for the sum of \$250.00. An itemized list of the literary properties referred to in this paragraph, describing said properties by title, author, and nature, is hereto attached and marked Exhibit 4-D.

Dated this 5th day of February, 1952.

RAYMOND C. SANDLER, and
NELSON ROSEN,

By /s/ NELSON ROSEN,

Attorneys for Petitioner.

/s/ MASON B. LEMING,

Acting Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

JOINT EXHIBIT No. 1-A

Agreement

This Agreement, made and entered into this 4th day of February, 1944, by and between James M. Fidler, hereinafter designated as "First Party," and Roberta L. Fidler, hereinafter designated as "Second Party,"

Witnesseth:

Whereas, the parties hereto intermarried on or about February 20, 1936; and

Whereas, there is no issue of said marriage; however, the parties hereto, on or about May 10, 1942, legally adopted a female child, born on or about May 8, 1942, which said child is named Bobbe Fidler, Jr.; and

Whereas, unhappy differences have arisen between the parties hereto, and a separation has already occurred between them and they are now living separate and apart; and

Whereas, on August 20, 1943, the parties hereto did enter into an Agreement, a copy of which is attached hereto, marked "Exhibit A," and referred to for greater particulars; and on October 21, 1943, did amend said Agreement (Exhibit A) by an instrument in writing entitled "Amendment to Agreement of August 20, 1943," a copy of which is attached hereto, marked "Exhibit B," and referred to for greater particulars; and on December 16, 1943, did further amend and supplement said Agreement (Exhibit A) by an instrument in writing en-

Joint Exhibit No. 1-A—(Continued)
titled “Agreement,” a copy of which is attached hereto, marked “Exhibit C,” and referred to for greater particulars; and

Whereas, the parties hereto are desirous of canceling said Agreements (Exhibits A, B and C) and of entering into a new Agreement which shall settle and forever adjust and determine their respective rights and interests in and to any property now owned or that may hereafter be owned or acquired by them, or either of them, and of the right of either to inherit from the other, the right of either to maintenance and/or support from the other, the right of either to attorneys’ fees and/or costs of suit in any action now pending or that may be commenced hereafter, the right of either to any family, widow’s or other allowance of either from the estate of the other, the right of either to declare a homestead out of the property of the other, or out of any joint or any community property, the right of either to administer upon the estate of the other, and the rights, claims or demands that either may have in the property of the other or against the other while living, or against the estate of the other, and as set forth hereafter,

Now, Therefore, for an in consideration of the premises and the covenants, agreements and stipulations hereinafter set forth, it is hereby mutually agreed by and between the parties hereto as follows:

Joint Exhibit No. 1-A—(Continued)

First: That First Party has heretofore transferred and conveyed unto Second Party, as and for her separate property and estate, the property described in Paragraph 1 of said Agreement (Exhibit A), receipt of which is hereby acknowledged by Second Party; and has executed and delivered unto Second Party two (2) certain promissory notes, in words and figures, as set forth in Section A of Paragraph 2 of said Agreement (Exhibit A), and in Section B of Paragraph First of Amendment to Agreement of August 20, 1943 (Exhibit B), receipt of which is hereby acknowledged by Second Party, which property and notes Second Party will retain as part consideration for the execution of this Agreement; and has paid counsel fees as is provided in Paragraph 3 of said Agreement (Exhibit A); and has fully performed all of the other terms, conditions and provisions of said Agreements (Exhibits A, B and C) which he was required to perform, to the date hereof.

Second: That Second Party has heretofore transferred and conveyed unto First Party, as his sole and separate property, all her right, title and interest in and to all the property, real and/or personal, now in the possession and under the control of First Party, and in particular, all of her right, title and interest in and to the real property in the County of Los Angeles, State of California, which is more specifically listed and described in Quitclaim Deed, a copy of which is attached hereto,

Joint Exhibit No. 1-A—(Continued)
marked "Exhibit D," receipt of which is hereby acknowledged by First Party, which property First Party will retain as part consideration for the execution of this Agreement; and has fully performed all of the other terms, conditions and provisions of said Agreements (Exhibits A, B and C) which she was required to perform, to the date hereof.

Third: That said Agreement (Exhibit A), and said Amendment to Agreement of August 20, 1943 (Exhibit B), and said Agreement (Exhibit C), are hereby mutually cancelled and set aside, and that the terms, conditions and provisions of each of said Agreements shall have no further force or effect from and after the date hereof.

Fourth: That Second Party does hereby acknowledge that all installment payments which have become due and payable under those two (2) certain promissory notes, which are described in words and figures in Paragraph First of Amendment to Agreement of August 20, 1943 (Exhibit B), have been fully paid, and Second party instead of cancelling and delivering up to First Party the said two (2) promissory notes, retains the same, as part consideration for the execution of this Agreement.

Fifth: That the following terms, provisions and conditions hereof shall supplant all terms, conditions and provisions of the cancelled Agreements (Exhibits A, B and C) from and after the date hereof.

Joint Exhibit No. 1-A—(Continued)

Sixth: That First Party does hereby again assign, transfer and convey unto Second Party as and for her separate property and estate, the following-described property, being the same property described in Paragraph 1 of said Agreement (Exhibit A), to wit:

(a) That certain 1940 Packard 6 Coupe automobile, Engine No. C40203;

(b) Cash in the sum of Twenty Thousand (\$20,000.00) Dollars, and/or part cash and part securities consisting of listed stocks or bonds of the equivalent reasonable market value, as of August 20, 1943, of said sum of Twenty Thousand (\$20,000.00) Dollars.

That First Party agrees to assign, transfer and convey unto Second Party as and for her separate property and estate, and he does hereby so assign, transfer and convey unto Second Party, for the aforesaid purpose, and as further consideration to Second Party for the execution of this Agreement, the following-described property, to wit:

Cash in the sum of \$7,000.00, and/or part cash and part securities consisting of listed stocks or bonds of the equivalent reasonable present market value of said sum of \$7,000.00.

Second Party acknowledges that she has now received cash and/or securities in the total amount of \$27,000.00, and said Packard automobile, as her

Joint Exhibit No. 1-A—(Continued)

share of a full and final division of property of the parties hereto.

That Second Party accepts said assignment, transfer and conveyance of said property upon the following conditions:

(a) In full payment, satisfaction and discharge of all right, title and interest, claims and demands of any and every character of the Second Party in or to any money, property, property rights, or thing of value, now or hereafter owned or acquired by the First Party;

(b) In full payment, satisfaction, discharge, settlement and release of all claims, demands and liability of every name, nature, character, kind or description against the First Party which the Second Party can, shall or may have by reason of any matter, thing or cause whatsoever, from the beginning of the world to the date hereof, save and except such as created under and by virtue of the terms of this Agreement;

(c) Said release extends to all claims of every nature or kind whatsoever, known or unknown, suspected or unsuspected, and all rights under Section 1542 of the Civil Code of California are hereby expressly waived.

That each of the parties hereto will be given the immediate and exclusive possession and control of any and all of the respective properties owned by them, or herein agreed to be given to them, respec-

Joint Exhibit No. 1-A—(Continued)

tively, and neither will, without the consent of the other, go upon the property of the other, or go in or upon the business property of the other, and will at no time either enter or molest the other in either the home or abode of the other, or enter or molest the other or interfere with the other in any manner in the place of business of the other.

Seventh: In addition to the foregoing, and on account of full and final payment of maintenance and support, alimony and alimony pendente lite to Second Party, and counsel fees and costs in any pending or future action between the parties hereto, First Party does hereby redeliver to Second Party, and Second Party will retain, those two (2) certain promissory notes, being the same notes described in Paragraph First of Amendment to Agreement of August 20, 1943 (Exhibit B), in words and figures as follows, to wit:

“Los Angeles, California,
“August 20, 1943.

“(A) \$18,000.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, or order, at Los Angeles, California, the sum of Eighteen Thousand (\$18,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the date hereof, any default in the payment of any

Joint Exhibit No. 1-A—(Continued)

installment when due shall cause the whole of said note to become immediately due and payable at the option of the holder hereof. Should suit be commenced to enforce the payment of this note, I promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

“/s/ JAMES M. FIDLER,

“4362 N. Clybourne Avenue,

“Burbank, California.”

“Los Angeles, California,

“October 21, 1943.

“(B) \$12,000.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, only, at Los Angeles, California, the sum of Twelve Thousand (\$12,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the first day of September, 1946, and any default in the payment of any installment when due shall cause the whole note to become immediately due and payable at the option of said Roberta L. Fidler. Should suit be commenced to enforce the payment of this note, I agree to pay such additional sum as

Joint Exhibit No. 1-A—(Continued)

the Court may adjudge reasonable as attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

“/s/ JAMES M. FIDLER,
“4362 Clybourne Avenue,
“Burbank, California.”

In addition to the foregoing and in full and final payment of maintenance and support, alimony and alimony pendente lite to Second Party, and counsel fees and costs in any pending or future action between the parties hereto, First Party will, upon the execution of the within instrument, make, execute and deliver unto Second Party one (1) promissory note, in words and figures as follows, to wit:

“Los Angeles, California,
“February 4, 1944.

“\$16,200.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, only, at Los Angeles, California, the sum of Sixteen Thousand, Two Hundred (\$16,200.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Three Hundred (\$300.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the first day of March, 1944, and any default in the payment of any installment when due shall cause the whole note to become immediately

Joint Exhibit No. 1-A—(Continued)

due and payable at the option of said Roberta L. Fidler. Should suit be commenced to enforce the payment of this note, I agree to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

“This promissory note is given by the undersigned to the payee in accordance with an Agreement executed by and between the parties this date, on account of the support and maintenance of the payee. Should payor, at any time during the term hereof, not have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, the monthly installments falling due hereunder during said periods shall be reduced in proportion to the amount of the reduction of his present radio contract, and should payor have no radio contract at all, then all monthly installments falling due hereunder during said period, shall be waived by payee, and payor shall not be required at any future time to pay the balance of any reduced, or waived payments, hereunder.

“/s/ JAMES M. FIDLER,

“4362 Clybourne Avenue,

“Burbank, California.”

That Second Party accepts said three (3) promissory notes, for her support and maintenance and not

Joint Exhibit No. 1-A—(Continued)

in lieu of property rights, upon the following conditions:

(a) In lieu of other provision for the support and maintenance of Second Party during her natural life;

(b) In full payment, discharge and satisfaction of all obligations or any thereof, on the part of First Party to maintain or support Second Party during her natural life;

(c) In full payment, discharge and satisfaction of counsel fees and costs in any pending or future action between the parties hereto, other than an action on said or any of said promissory notes.

Eighth: That the installment payments provided in the three (3) promissory notes hereinabove set forth, being taxable to her as income, Second Party will, from and after the date hereof, file such income tax returns and/or declarations, both Federal and State, as are required by law, and will include therein all such support and maintenance payments received by her, and will pay all taxes shown to be due and payable under such returns and/or declarations.

Should any of the monthly installments provided for in the said \$16,200.00 promissory note, last above described, be reduced or waived and the payor not be required to make same, First Party will give to Second Party, not for her support and maintenance,

Joint Exhibit No. 1-A—(Continued)

but as an absolute gift without condition, sufficient moneys to enable Second Party to pay her income taxes, both Federal and State, when due, on support and maintenance payments received from First Party, but not on income received by Second Party in excess thereof, without resort to the support and maintenance payments provided for in the two other promissory notes, above described, it being the intention of the parties hereto that Second Party will, during any period that the payments under said promissory note last above described are reduced or waived, have a net minimum sum of \$500.00 per month for her support and maintenance.

Ninth: That until otherwise changed by the written mutual consent of the parties hereto, or by order of a court of competent jurisdiction, after notice to both parties and after a hearing in regard to the custody or guardianship of said minor child, the custody of said minor child shall be, and is hereby determined, as follows:

(a) First Party shall have the exclusive custody and control of said minor child from the first day of April to the last day of September of each and every year, during the minority of said minor child. That is to say, that First Party shall have exclusive custody and control of said minor child for a period of six (6) months, beginning on the first day of April, of each and every year hereafter;

(b) Second Party shall have the exclusive cus-

Joint Exhibit No. 1-A—(Continued)

tody and control of said minor child from the first day of October of each year to the last day of March of each following year, during the minority of said minor child. That is to say, that Second Party shall have exclusive custody and control of said minor child for a period of six (6) months, beginning on the first day of October of each and every year hereafter.

That neither party will take or remove said minor child from the State of California without court order, or without the written permission and consent of the other party, first had and obtained. Should the home or place of abode of either party be outside of the State of California, at any time subsequent hereto, no such court order or written permission or consent shall be required to take said minor child to such home or place of abode.

That at all times that either party hereto has the custody and control of said minor child, the other party shall have the right to see and visit said minor child at all reasonable times, at the home of the other party, or at such other places as shall be mutually agreed upon. Either party may, with the consent of the other party, take said minor child to his or her home or place of abode, upon reasonable occasions.

That neither party will influence or attempt to influence the said minor child in its affections or regard to the other party.

Joint Exhibit No. 1-A—(Continued)

Tenth: First Party, during the minority of said minor child, or until the parties hereto, in writing, do by mutual consent, change or modify this Agreement in this regard, agrees to pay to Second Party, as and for the care, support and maintenance of said minor child during the period that Second Party shall have the custody and control of said minor child, the sum of \$200.00 per month, said payments to be made on the first day of each and every month during said period, commencing March 1, 1944.

Eleventh: That Second Party agrees to pay for all ordinary medical care and attention, and for all ordinary medical services, rendered to said minor child during any period she has the custody and control of said minor child. First Party agrees to pay for all extraordinary medical care and attention, and for all extraordinary hospitalization and medical services, rendered to said minor child during any period that either of the parties hereto have the care and custody of said minor child. Unless said minor child shall be continuously under doctors' care and is required to be hospitalized, or to remain at home in bed for a continuous period of at least five (5) days, such medical care and attention shall constitute ordinary medical care and attention, and First Party shall not be required to pay for the same. The parties hereto shall be obligated to pay for such medical care and attention, as above set forth, during the minority of said minor child, or until the

Joint Exhibit No. 1-A—(Continued)

parties hereto, in writing, do by mutual consent, change or alter this Agreement in this regard.

Twelfth: That First Party will pay to Jerry Giesler, 412 Chester Williams Building, 215 West 5th Street, Los Angeles, California, attorney for Second Party, the sum of \$1,000.00 cash, for and in payment of the fees of said Jerry Giesler, as attorney for Second Party, and the said sum of money shall be paid concurrently with the execution of this Agreement, and the receipt thereof is hereby acknowledged.

Thirteenth: That Second Party conveys, transfers and assigns to First Party, as his sole and separate property, all her right, title and interest in and to all the property, real and/or personal, now owned or in the possession and under the control of First Party, and in particular, all of the real property set forth and listed in the Quit Claim Deed attached hereto, marked "Exhibit D," and as though the same were fully set forth and described at this point, and any and all of said property is and shall be the sole and separate property of First Party, and Second Party has not and shall not have any right, title or interest of any kind or nature whatsoever therein and thereto.

Second Party reaffirms said Quit Claim Deed in favor of First Party, dated August 20, 1943, and will, upon demand by or on behalf of First Party, execute such further quit-claims, deeds, assignments or

Joint Exhibit No. 1-A—(Continued)

other conveyances or documents as First Party may demand in connection with the said property.

Fourteenth: That First Party conveys, transfers and assigns to Second Party, as her sole and separate property, all his right, title and interest in and to all the property, real and/or personal, now in the possession and under the control of Second Party and as though the same were fully set forth and described at this point, and any and all of said property is and shall be the sole and separate property of Second Party, and First Party has not and shall not have any right, title or interest of any kind or nature whatsoever therein or thereto.

That First Party will, upon demand by or on behalf of Second Party, execute such further quitclaims, deeds, assignments or other conveyances or documents as Second Party may demand in connection with the said property.

Fifteenth: That each party does hereby release, remise, quitclaim and discharge all of his or her rights, claims or demands of any kind or nature against the other, does hereby release, remise, waive and discharge all of his or her rights to inherit from the other, or his or her rights to any family or widow's allowance from the other in connection with the estate of the other or otherwise, does hereby release, remise, waive and discharge all his or her rights to administer upon or in connection with the estate of the other, does hereby release, remise, quitclaim and waive any right to

Joint Exhibit No. 1-A—(Continued)

maintenance and/or support from the other excepting as set forth herein, does hereby release, remise, waive and discharge the other from any rights of either to attorney's fees and/or court costs in any action or actions now pending or that may be commenced, excepting as otherwise specifically set forth herein, does hereby waive the right of either to declare a homestead out of the property of the other, or out of any community property, does hereby release, remise, waive and discharge each other from any right to share in any insurance policies heretofore issued or hereafter to be issued, and does hereby release, remise, quitclaim and discharge any and all claims, rights or demands that either may have, or has had, or might have in the future, of any kind or nature whatsoever in the property of the other, or against the other, while living, or against the estate of the other, now or hereafter.

Sixteenth: That neither party will contract or incur any bills or obligations in the name of the other, and that neither party shall be liable for any bills, obligations, contracted or incurred by the other.

Seventeenth: That this agreement constitutes a final and complete determination, settlement and adjustment of the property rights, interests and obligations of the parties hereto, and of their rights as set forth in this Agreement.

Eighteenth: That any property, real or personal, hereafter acquired by either party shall be the

Joint Exhibit No. 1-A—(Continued)

separate property of such party and the other shall have no right, title or interest therein or thereto.

That all earnings and/or accumulations of First Party of every kind or nature whatsoever from the date of the execution of this Agreement shall be and remain his sole and separate property and estate, and shall not be nor be deemed to be joint or community property at any time whatever, or at all.

Nineteenth: Nothing in this Agreement contained shall be construed as a waiver or renunciation by either party of any grant, gift, devise or bequest voluntarily made to the other party hereto by Last Will and Testament, deed or otherwise.

Twentieth: Nothing in this Agreement shall be construed as prohibiting Second Party from legally proceeding against any property of the First Party, not exempt from execution, for the purpose of enforcing the terms of the aforesaid promissory notes, or any of them.

Twenty-First: This agreement may be used in any judicial proceedings which may hereafter be brought by either of the parties, or in any judicial proceedings now pending between the parties, and either of the parties hereto may cause this Agreement to be made a part of any judgment or any decree rendered or made in any of the aforesaid judicial proceedings.

Twenty-Second: This Agreement is not made in contemplation of divorce of the parties hereto or

Joint Exhibit No. 1-A—(Continued)

upon any understanding or agreement that either party hereto shall not defend against any action for separate maintenance, divorce or annulment, now pending or hereafter brought by the other party; however, this Agreement is made without prejudice to the rights of either party hereto to sue for divorce, separate maintenance or annulment, and this Agreement shall remain in full force and effect according to its terms, irrespective of the result of any action for separate maintenance, divorce or annulment, now pending, or that may be commenced by either party at any time hereafter.

Twenty-Third: This Agreement is entire; it may not be altered, amended or modified, save by an instrument in writing executed by the parties hereto. It includes all representations of every kind and nature made by one party to the other.

Twenty-Fourth: This Agreement is entered into in the State of California and shall be construed and interpreted under and in accordance with the laws of the State of California.

Twenty-Fifth: That the provisions, covenants and agreements hereof shall apply to and bind the heirs, executors, administrators, successors, assigns and personal representatives of the respective parties, and also inure to their benefit.

Twenty-Sixth: That each of the parties hereto has read this Agreement and has had the same fully explained to them by their respective counsel, and

Joint Exhibit No. 1-A—(Continued)
 fully knows, understands and realizes the significance and legal import and effect of the execution of said Agreement, and fully knows and appreciates the legal rights and privileges of each other in the premises; and each party hereby declares and asserts that each is acting freely and voluntarily and free from duress, fraud, menace or misrepresentation of any person whomsoever.

In Witness Whereof, the parties hereto have executed this Agreement, the date first above written.

/s/ JAMES M. FIDLER,
 First Party.

/s/ ROBERTA L. FIDLER,
 Second Party.

Witness:

VINCENT C. HICKSON,
 Attorney for James M. Fidler.

JERRY GIESLER,
 Attorney for Roberta L.
 Fidler.

State of California,
 County of Los Angeles—ss.

On this 4th day of February, 1944, before me, the undersigned, a Notary Public in and for said County and State, personally appeared James M. Fidler, known to me to be the person whose name is sub-

Joint Exhibit No. 1-A—(Continued)

scribed to the within instrument, and acknowledged that he executed the same.

Witness My Hand and official seal.

/s/ NELDA C. ROW,

Notary Public in and for Said
County and State.

My Commission expires September 28, 1947.

State of California,
County of Los Angeles—ss.

On this 4th day of February, 1944, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Roberta L. Fidler, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.

Witness My Hand and official seal.

/s/ NELDA C. ROW,

Notary Public in and for Said
County and State.

My Commission expires September 28, 1947.

Joint Exhibit No. 1-A—(Continued)

EXHIBIT A

Agreement

This Agreement, made and entered into this 20th day of August, 1943, between James M. Fidler, hereinafter designated as First Party, and Roberta L. Fidler, hereinafter designated as Second Party.

Witnesseth:

Whereas, the parties hereto intermarried on or about the 20th day of February, 1936, and ever since have lived together as husband and wife;

Whereas, there has been no issue of said marriage, however said parties, on or about the 10th day of May, 1942, legally adopted a female child, born on or about the 8th day of May, 1942, which said child is named Bobbe Fidler, Jr.;

Whereas, unhappy differences have arisen and still continue to exist between said parties hereto, and they are not now living together as husband and wife; and

Whereas, said parties hereto are mutually desirous of making a division of property and fully determining and settling their property rights for the present as well as for the future, and to provide for the support and maintenance of said second party and the care, custody, control and maintenance of the aforesaid minor child, by agreement, and without resort to any court for that purpose,

Joint Exhibit No. 1-A—(Continued)

Now, Therefore, in consideration of the premises, and in consideration of the covenants and agreements herein contained, binding upon the respective parties hereto, the said parties hereto do mutually agree and consent to alter, and do hereby alter and change their relations as to property and property rights, and the custody and control of said minor child; and in order to make such property division and to provide more effectually for their mutual maintenance and support, and especially for the maintenance and support of said Second Party and said minor child, and in furtherance of this agreement, said parties hereto hereby mutually further agree as follows:

1. Said First Party, in order to make said division of property, hereby agrees to assign, transfer and convey unto said Second Party as and for her separate property and estate, and he does hereby so assign, transfer and convey unto said second party, for the aforesaid purpose, all of the following described property, to wit:

(a) That certain 1940 Packard 6 Coupe automobile, Engine No. C40203;

(b) Cash in the sum of Twenty Thousand (\$20,000.00) Dollars, and/or part cash and part securities consisting of listed stocks or bonds of the equivalent reasonable present market value of said sum of Twenty Thousand (\$20,000.00) Dollars.

Said First Party will, concurrently with the execution hereof, in furtherance of this agreement, formally make, execute, acknowledge and deliver to said Second Party a good and sufficient bill of sale

Joint Exhibit No. 1-A—(Continued)

of and to the aforesaid property, wherein and whereby he shall convey all his interest therein to said Second Party.

2. In addition to the foregoing and in full and final payment of support, alimony and alimony pendente lite, First Party will, upon the execution of the within instrument, make, execute and deliver unto said Second Party two (2) certain promissory notes, in words and figures as follows, to wit:

R.L.F.

J.M.F.

“Los Angeles, California,

“August, 1943.

“(A) \$18,000.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, or order, at Los Angeles, California, the sum of Eighteen Thousand (\$18,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the date hereof, any default in the payment of any installment when due shall cause the whole note to become immediately due and payable at the option of the holder hereof. Should suit be commenced to enforce the payment of this note, I promise to pay such additional sum as the Court may adjudge reasonable as attorney’s fees in said

Joint Exhibit No. 1-A—(Continued)

suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

.....
"JAMES M. FIDLER,
"4362 N. Clybourne Avenue,
"Burbank, California."

"Los Angeles, California,
"August, 1943.

"(B) \$12,000.00

"At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, only at Los Angeles, California, the sum of Twelve Thousand (\$12,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the first day of September, 1946, and any default in the payment of any installment when due shall cause the whole note to become immediately due and payable at the option of said Roberta L. Fidler. Should suit be commenced to enforce the payment of this note, I agree to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

"This promissory note is given by the undersigned

Joint Exhibit No. 1-A—(Continued)

to the payee in accordance with an Agreement executed by and between the parties this date, for the support and maintenance of the payee. This note shall become absolutely void and of no effect upon any remarriage of the payee and whether or not such remarriage shall be valid.

.....
 “JAMES M. FIDLER,
 “4362 Clybourne Avenue,
 “Burbank, California.”

R.L.F.

J.M.F.

3. In addition to the foregoing, First Party will, upon the execution of the within instrument, pay to Bodkin, Breslin & Luddy, as attorneys for Second Party, the sum of Fifteen Hundred (\$1,500.00) Dollars.

R.L.F.

J.M.F.
 lars as and for payment in full for all professional services rendered in and about the preparation and execution of this agreement and in full of attorneys' fees in any uncontested divorce proceeding which may be hereafter instituted by Second Party against First Party in the Superior Court of the State of California, in and for the County of Los Angeles.

4. First Party shall have and he is hereby given, subject to modification or any other order made by a Court of competent jurisdiction, exclusive custody and control of the aforesaid minor child of the parties hereto, provided, however, that First Party

Joint Exhibit No. 1-A—(Continued)

will wholly support, educate and maintain said child and will maintain an adequate and proper home for her at all times hereafter until her majority. The second party shall have the right and privilege, at reasonable times, of visiting said child at the home of First Party, and at such further times and places as shall be mutually agreed upon. Said Second Party may, with the consent of First Party, take said child to her home or place of abode upon reasonable occasions. Neither party shall take said child outside the State of California without the consent of the other.

5. Said Second Party hereby waives, renounces, releases and relinquishes unto said First Party any and all right, title, interest or demand of any nature or description in or to any or all of the property, both real or personal, which said First Party may now own or have any interest in, excluding the property herein given to Second Party; and waives and releases unto said First Party all interest, claims or demands of every nature or character, in and to all property, either real or personal, which said First Party may hereafter acquire or own, and to any and all earnings, profits and income of said First Party, hereby giving, granting and delivering unto said First Party all of her right, title and interest which she now has or hereafter may have, acquire or claim in and to said property, income and profits hereinafter belonging to or appearing in the

Joint Exhibit No. 1-A—(Continued)

name of said First Party, or otherwise; and, except as otherwise hereinafter provided, hereby waives, releases and relinquishes all right of inheritance from said First Party and also hereby waives and releases to said First Party all present and future claims and demands for division of property and for support and maintenance, and to all claims for any alimony pendente lite, permanent alimony, counsel fees and costs, which hereafter be or become the subject of any action or proceeding for divorce or maintenance between the parties hereto, it being expressly agreed that the delivery to Second Party by said First Party of said sum of Twenty Thousand (\$20,000.00) Dollars and said Packard automobile is to be and is in full division of property between the parties hereto and that the delivery of said promissory notes and payment of said counsel fees are and shall be in full payment of the support and maintenance of Second Party and of any payments of said alimony allowance, fees or costs; and also hereby waives, renounces and relinquishes all rights and claims of any allowance to herself as family allowance, or otherwise, in the event of the death of said First Party, and also to any probate homestead upon or in any of the property of said First Party, and also waives and relinquishes the right and privilege of declaring, and hereby agrees not to declare a homestead upon any of the property of First Party.

Nothing in this agreement contained shall be construed as a waiver or renunciation by either

Joint Exhibit No. 1-A—(Continued)

party of any grant, gift, devise or bequest voluntarily made to the other party hereto by Last Will and Testament, deed or otherwise.

6. It is further covenanted and agreed by and between the parties hereto that the execution of this agreement is intended to be and is a full, complete and final adjustment, division and settlement of all the property, interests and rights of the parties hereto; and that neither party hereto shall, or will at any time hereafter make or attempt to make any other or further claim upon the other, or upon the property of the other, than as herein agreed and provided; that the respective properties herein stipulated to be transferred and conveyed shall be and remain forever the separate property of the respective parties hereto, free from all claims of the other, and neither of the parties hereto will claim as against the other or as against the heirs, assigns or legal representatives, or otherwise, the increase in value of the property of the other as herein settled.

Nothing in this paragraph nor in any other paragraph or portion of this agreement shall be construed as prohibiting Second Party from legally proceeding against the or any property of First Party, not exempt from execution, for the purpose of enforcing the terms of the aforesaid promissory notes, or either of them.

7. It is further agreed that either of the parties

Joint Exhibit No. 1-A—(Continued)

hereto shall have an immediate right to devise or bequeath by Will their respective interests in the properties belonging to each other under the provisions of this agreement; and that the devisees and legatees under any such will shall and may have the same privileges and rights as the respective testator or testatrix may have or exercise in their respective lifetime.

8. It is further expressly agreed that neither party hereto will in any way or manner contest or oppose the probate of the other's will, whether heretofore or hereafter made, or interfere with the other, their heirs or assigns, in the exercise of the rights of property herein stipulated and agreed to; that neither of them will hereafter at any time assert any right, interest or title as heir at law of the other to any property devised or bequeathed by such will, or as against the estate of the other should the other die intestate; and all claim as such heir of the other, or as surviving husband and wife, respectively, and all right to contest or oppose the last will of the other is hereby expressly waived, together with the right to administer or to apply for letters of administration or letters of administration with the will annexed upon the estate of the other; or will not in any manner interfere with anyone otherwise applying or petitioning for the administration of the estate of the other.

9. It is further agreed that each of the parties hereto will be given the immediate and exclusive

Joint Exhibit No. 1-A—(Continued)

possession and control of any and all of the respective properties owned by them, or herein agreed to be given to them, respectively, and that neither will, without the consent of the other, go upon the property of the other, or go in or upon the business property of the other, and will at no time either enter or molest the other in either the home or abode of the other, or enter or molest the other or interfere with the other in any manner in the place of business of the other; it being understood, however, that Second Party shall have the right and privilege, as herein given, to visit the said minor child as herein provided, at the present home or any home hereafter maintained by said First Party.

10. Said Second Party agrees that she will, concurrently with the execution hereof, or in compliance with any reasonable request of First Party, in furtherance of this agreement, formally make, execute, acknowledge and deliver to said First Party any and all written deeds, quitclaims, assignments or other instruments necessary or proper to effectuate the purposes and objects of this agreement.

11. It is further expressly agreed that each of the parties hereto has read this agreement and has had the same fully explained to them by their respective counsel, and fully know, understand and realize the significance and legal import or effect of the execution of said agreement, and fully know and appreciate the legal rights and privileges of each other in the premises; and hereby declare and assert that

Joint Exhibit No. 1-A—(Continued)

each is acting freely and free from duress, fraud, menace or misrepresentation of any person whomsoever.

12. It is expressly agreed that each and every term herein contained is a material part of this agreement; that time is of the essence hereof; that this agreement shall be and is binding upon the heirs, assigns and legal representatives of the respective parties hereto.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

JAMES M. FIDLER,
First Party.

ROBERTA LAW FIDLER,
Second Party.

EXHIBIT B

Amendment to Agreement of
August 20, 1943

This Agreement, made and entered into this 21st day of October, 1943, by and between James M. Fidler, hereinafter designated as the "Husband," and Roberta L. Fidler, hereinafter designated as the "Wife,"

Witnesseth

It is agreed by and between the parties as follows:

Joint Exhibit No. 1-A—(Continued)

First: Page 3 of the Agreement entered into by and between the parties on the 20th day of August, 1943, shall be deemed to be deleted and the provisions thereof shall be deemed to be substituted by words and figures as follows:

“Los Angeles, California,

“August 20, 1943.

“(a) \$18,000.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, or order at Los Angeles, California, the sum of Eighteen Thousand (\$18,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the date hereof, any default in the payment of any installment when due shall cause the whole of said note to become immediately due and payable at the option of the holder hereof. Should suit be commenced to enforce the payment of this note, I promise to pay such additional sum as the court may adjudge reasonable as Attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

“/s/ JAMES M. FIDLER.

“4362 N. Clybourne Avenue,

“Burbank, California.”

Joint Exhibit No. 1-A—(Continued)

“Los Angeles, California,

“October 21, 1943.

“(b) \$12,000.00

“At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, only, at Los Angeles, California, the sum of Twelve Thousand (\$12,000.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Five Hundred (\$500.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the first day of September, 1946, and any default in the payment of any installment when due shall cause the whole note to become immediately due and payable at the option of said Roberta L. Fidler. Should suit be commenced to enforce the payment of this note, I agree to pay such addition sum as the Court may adjudge reasonable as attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

“/s/ JAMES M. FIDLER,

“4362 Clybourne Avenue,

“Burbank, California.”

Second: Wife does hereby acknowledge receipt of the said promissory notes hereinabove described.

In Witness Whereof, the parties hereto have

Joint Exhibit No. 1-A—(Continued)

hereunto executed this document this 21st day of October, 1943.

“/s/ JAMES M. FIDLER,
“Husband.

“/s/ ROBERTA LAW FIDLER,
“Wife.”

EXHIBIT C

Agreement

This Agreement, made and entered into this 16th day of December, 1943, by and between James M. Fidler, hereinafter designated as “First Party,” and Roberta L. Fidler, hereinafter designated as “Second Party:”

Witnesseth

This agreement is a supplement and amendment to the agreement heretofore entered into by and between the parties on the 20th day of August, 1943, as thereafter amended by agreement of October 21, 1943.

It is the purpose of the parties to modify their said prior agreement with respect to the custody and control of the minor child of the parties, and to provide for such custody and control to be exercised by the parties during respective periods to be herein provided.

It is therefore agreed that subject to modification,

Joint Exhibit No. 1-A—(Continued)

or any order made by Court of competent jurisdiction, the custody of the said minor child of the parties shall be and is hereby determined as follows:

(a) First Party shall have the exclusive custody and control of the said minor child from the 1st day of April to the last day of September, of each and every year. That is to say, that First Party shall have exclusive custody and control of the said minor child for a period of six (6) months, beginning on the 1st day of April of each and every year.

(b) Second Party shall have the exclusive custody and control of the said minor child from the 1st day of October of each year to the last day of March of each following year. That is to say, that Second Party shall have exclusive custody and control of the said minor child for a period of six (6) months, beginning on the 1st day of October of each and every year.

Provided, however, Second Party does hereby waive her right to the custody hereby granted for the balance of the year 1943 and agrees that she will not take the custody and control of the child until after the 1st day of January, 1944. It is nevertheless understood that First Party shall be entitled to the exclusive custody and control of the said child for the period beginning April 1, 1944, as hereinabove provided.

Subject to further agreement of the parties and modification, it is understood that during such times

Joint Exhibit No. 1-A—(Continued)

when Second Party shall have the custody and control of the said child, First Party will defray the costs of the following:

- (a) A nurse for the said child;
- (b) Food for the said child and nurse;
- (c) Clothing for the said child;
- (d) Medical expense for the said child.

Second Party agrees to account to First Party with respect to any and all such expenses.

In Witnesses Whereof, the parties do hereunto set their hands the day and year first above written.

/s/ JAMES M. FIDLER,
James M. Fidler,
First Party.

/s/ ROBERTA L. FIDLER,
Roberta L. Fidler,
Second Party.

EXHIBIT D

Quitclaim Deed

In consideration of the sum of Ten Dollars (\$10.00), and other valuable considerations, receipt of which is hereby acknowledged, Roberta Law Fidler does hereby remise, release and forever quitclaim to James M. Fidler, all the following real

Joint Exhibit No. 1-A—(Continued)

property in the County of Los Angeles, State of California, described as:

(1) Lots 99 and 100 of Tract No. 9517, in the City of Burbank, County of Los Angeles, State of California, as per map recorded in Book 134, Pages 89 to 91, inclusive, of Maps, in the office of the County Recorder;

(2) Lot 110 of Tract No. 9517, in the City of Burbank, County of Los Angeles, State of California, as per map recorded in Book 134, Pages 89 to 91, inclusive, of Maps, in the office of the County Recorder of said County;

(3) Lot 9 of Del Mar Tract as per Map recorded in Book 6, Page 154 of Maps, in the office of the County Recorder of Los Angeles County;

(4) Lot 96 of Tract No. 9517, in the City of Burbank, County of Los Angeles, State of California, as per map recorded in Book 134, Pages 89, 90 and 91 of Maps, in the office of the County Recorder of said County;

(5) Lot 97 of Tract No. 9517, in the City of Burbank, County of Los Angeles, State of California, as per map recorded in Book 134, Pages 89, 90 and 91 of Maps, in the office of the County Recorder of said County;

(6) Lot 98 of Tract No. 9517, in the City of Burbank, County of Los Angeles, State of California, as per map recorded in Book 134, Pages 89 to

Joint Exhibit No. 1-A—(Continued)

91, inclusive, of Maps, in the office of the County Recorder of said County;

(7) The Northerly forty (40) feet of Lot Seven (7) and the Southerly ten (10) feet of Lot Nine (9) of the Schloesser Terrace Tract No. 2, as per map recorded in Book 7, Page 82 of Maps, in the office of the County Recorder of Los Angeles County.

Dated this 20th day of August, 1943.

ROBERTA LAW FIDLER,
Roberta Law Fidler.

State of California,
County of Los Angeles—ss.

On this 20th day of August, 1943, before me, the undersigned, a Notary Public in and for said State and County, personally appeared Roberta Law Fidler, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] A. Z. LUDDY,
Notary Public in and for the County of Los Angeles, State of California.

JOINT EXHIBIT No. 2-B

In the Seventh Judicial District Court of the State
of Nevada, in and for the County of White
Pine

No. 4771

RUTH LAW FIDLER,

Plaintiff,

vs.

JAMES M. FIDLER,

Defendant.

DECREE OF DIVORCE

This Cause came on regularly for trial on the 20th day of March, 1944, before the Hon. Harry M. Watson, Judge of the above-entitled Court, sitting without a jury, plaintiff appearing in person and being represented by Wiley & Ralli, her attorneys, and the defendant being represented by Clarence A. Eddy, his attorney, and evidence having been introduced in support of the Complaint, and the defendant having failed to introduce any evidence in support of the Answer, the Court, after hearing the evidence and considering all and singular the law and the premises finds it has jurisdiction over the parties hereto and over the subject matter hereof and that each and every of the allegations contained in plaintiff's Complaint are true and that plaintiff is entitled to a decree of divorce on the ground as set forth in the Complaint on file herein.

Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the marriage relationship now and heretofore existing between plaintiff and de-

defendant be and the same is hereby dissolved and the parties are restored to the status of single persons.

It Is Further Ordered, Adjudged and Decreed that that certain Settlement Agreement entered into between the parties, dated February 4, 1944, be and the same is hereby confirmed, ratified, approved and adopted as a part of this Decree.

It Is Further Ordered, Adjudged and Decreed that the defendant herein have the care, custody and control of the minor child, named Bobbe Fidler, Jr., until October 1, 1944, and thereafter the plaintiff is to have the custody of the child for the next ensuing six months, or until April 1, 1945; thereafter the custody of said child shall be distributed to the parties for six months each, until further order of this Court; that during the term plaintiff has custody of the said minor child, defendant shall pay to her for the care, support and maintenance of said child, the sum of Two Hundred (\$200.00) Dollars per month.

It Is Further Ordered, Adjudged and Decreed that the defendant shall pay to the plaintiff, in accordance with the terms of said Settlement Agreement, the sum of Eight Hundred (\$800.00) Dollars per month, commencing forthwith and continuing for a period of five years.

The Court herewith retains jurisdiction herein with reference to the said minor child for the purpose of making such orders as may hereafter appear to best serve the interest of said minor child.

Dated and Done this 20th day of March, 1944.

HARRY M. WATSON,
District Judge.

Office of County Clerk and Ex Officio Clerk of the
Seventh Judicial District Court in and for
White Pine County, Nevada

State of Nevada,
County of White Pine—ss.

I, F. D. Oldfield, County Clerk and ex officio Clerk of the Seventh Judicial District Court of the State of Nevada, County of White Pine, do hereby certify that the above and foregoing is a full, correct and true copy of the original Decree of Divorce Dated March 20, 1944, Ruth Law Fidler vs. James M. Fidler, File No. 4771, which now remains of record in my office at Ely, County and State aforesaid.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of Said Court, at my office in the City of Ely, State of Nevada, this 8th day of May, A.D. 1944.

[Seal] F. D. OLDFIELD,
County Clerk and Ex Officio
Clerk of Said Court;

By E. G. CHAMBERLAIN,
Deputy.

Filed May 6, 1944. (Seventh Judicial Court.)

Admitted in evidence Feb. 5, 1952.

JOINT EXHIBIT No. 3-C

In the Seventh Judicial District Court of the State
of Nevada in and for the County of White
Pine

No. 4771

RUTH LAW FIDLER,

Plaintiff,

vs.

JAMES M. FIDLER,

Defendant.

AMENDED DECREE OF DIVORCE

This Cause came on regularly for trial on the 20th day of March, 1944, before the Hon. Harry M. Watson, Judge of the above-entitled Court, sitting without a jury, plaintiff appearing in person and being represented by Wiley & Ralli, her attorneys, and the defendant being represented by Clarence A. Eddy, his attorney, and evidence having been introduced in support of the Complaint, and the defendant having failed to introduce any evidence in support of the Answer, the Court, after hearing the evidence and considering all and singular the law and the premises finds it has jurisdiction over the parties hereto and over the subject matter hereof and that each and every of the allegations contained in plaintiff's Complaint are true and that plaintiff is entitled to a decree of divorce on the ground as set forth in the Complaint on file herein.

Now, Therefore, it is hereby Ordered. Adjudged

and Decreed that the marriage relationship now and heretofore existing between plaintiff and defendant be and the same is hereby dissolved and the parties are restored to the status of single persons.

It Is Further Ordered, Adjudged and Decreed, that that certain Settlement Agreement entered into between the parties, dated February 4, 1944, be and the same is hereby confirmed, ratified, approved and adopted as a part of this Decree.

It Is Further Ordered, Adjudged and Decreed that the defendant herein have the care, custody and control of the minor child, named Bobbe Fidler, Jr., until October 1, 1944, and thereafter the plaintiff is to have the custody of the child for the next ensuing six months, or until April 1, 1945; thereafter the custody of said child shall be distributed to the parties for six months each, until further order of this Court; that during the term plaintiff has custody of the said minor child, defendant shall pay to her for the care, support and maintenance of said child, the sum of Two Hundred (\$200.00) Dollars per month.

It Is Further Ordered, Adjudged and Decreed, that defendant shall pay to plaintiff in accordance with the terms of said Settlement Agreement the sum of Eight Hundred (\$800.00) Dollars per month commencing forthwith and continuing for a period of four years and five months, the last monthly payment becoming due and payable on August 1, 1948, providing, however, that should defendant, at any time before August 1, 1948, not

have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, monthly payments to the extent of the sum Three Hundred (\$300.00) Dollars of said sum of Eight Hundred (\$800.00) Dollars per month, shall be reduced in proportion to the amount of the reduction of his present radio contract, and should defendant have no radio contract at all, between the date hereof and said August 1, 1948, then monthly payments to the extent of the sum of Three Hundred (\$300.00) Dollars per month of said sum of Eight Hundred (\$800.00) Dollars per month, shall be waived and shall not be made to plaintiff by defendant, and defendant shall not be required at any future time to pay to plaintiff the balance of any reduced, or waived, payments hereunder.

It Is Further Ordered, Adjudged and Decreed, that all executory provisions of said Settlement Agreement which are not incorporated in this Decree in a plenary manner, are hereby declared to be binding on the respective parties hereto, and each of said parties is hereby ordered to do and perform all acts and obligations required to be done or performed by said executory provisions of said Settlement Agreement.

The Court herewith retains jurisdiction herein with reference to the said minor child for the purpose of making such orders as may hereafter appear to best serve the interests of said minor child.

Dated and Done this 20th day of March, 1944.

HARRY M. WATSON,
District Judge.

Office of County Clerk and Ex Officio Clerk of the
Seventh Judicial District Court in and for
White Pine County, Nevada

County of White Pine,
State of Nevada—ss.

I, F. D. Oldfield, County Clerk and ex officio Clerk of the Seventh Judicial District of the State of Nevada, County of White Pine, do hereby certify that the above and foregoing is a full, correct and true copy of the original "Amended Decree of Divorce," Ruth Law Fidler, Plaintiff, vs. James M. Fidler, Defendant, which now remains of record in my office at Ely, County and State aforesaid.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at my office in the town of Ely, this First day of January, A.D. 1945.

/s/ F. D. OLDFIELD,
County Clerk and Ex Officio
Clerk of Said Court.

By,
Deputy.

Filed Nov. 16, 1944. (Seventh Judicial Court.)

Admitted in evidence February 5, 1952, T.C.U.S.

[Title of Tax Court and Cause.]

SUPPLEMENTAL STIPULATION
OF FACTS

The parties to this proceeding, through their respective counsel of record, hereby stipulate that the following facts are true and may be found as facts by the court, subject to the right of either party to enter objections on the grounds of relevancy or materiality, and the right of either party to present other items of proof, either related or unrelated, to the facts herein stated but not inconsistent therewith:

I.

That Exhibit 5 attached hereto is a true and correct copy of a letter written on May 18, 1944, by Mr. Vincent C. Hickson, attorney at law of Los Angeles, California, to Mr. Paul Ralli of the law firm of Wiley and Ralli of Las Vegas, Nevada. That Mr. Hickson acted as attorney for petitioner herein in the preparation of the agreement of settlement and separation between petitioner and Ruth Law Fidler dated February 4, 1944, introduced in this cause as Exhibit 1-A; that Mr. Paul Ralli is a partner in the law firm of Wiley and Ralli, which firm represented Ruth Law Fidler in the divorce action filed by her against petitioner herein in the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, the same being case No. 4771.

II.

That Exhibit 6 attached hereto is a true and correct copy of a letter written on May 22, 1944, by said Paul Ralli to said Vincent C. Hickson.

III.

That Exhibit 7 attached hereto is a true and correct copy of a letter written on August 31, 1944, by said Vincent C. Hickson to said Paul Ralli.

IV.

That Exhibit 8 attached hereto is a true and correct copy of a letter written on September 7, 1944, by said Paul Ralli to said Vincent C. Hickson.

V.

That Exhibit 9 attached hereto is a true and correct copy of a letter written on September 8, 1944, by said Vincent C. Hickson to said Paul Ralli.

VI.

That Exhibit 10 attached hereto is a true and correct copy of a letter written on September 19, 1944, by said Vincent C. Hickson to said Paul Ralli.

VII.

That Exhibit 11 attached hereto is a true and correct copy of a letter written on October 5, 1944, by said Vincent C. Hickson to said Paul Ralli.

VIII.

That Exhibit 12 attached hereto is a true and correct copy of a letter written on October 9, 1944, by said Paul Ralli to said Vincent C. Hickson.

IX.

That said copies of said letters may be introduced in evidence in this cause with the same force and effect as if the originals thereof were introduced.

Dated: This 7th day of February, 1952.

RAYMOND C. SANDLER, and
NELSON ROSEN,

By /s/ NELSON ROSEN,

Attorneys for Petitioner,
James M. Fidler.

/s/ MASON B. LEMING,
Acting Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

EXHIBIT No. 5

May 18, 1944.

Paul Ralli, Esq.,
Attorney at Law,
Las Vegas, Nevada.

Re: Fidler vs. Fidler, No. 4771, in the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine.

Dear Sir:

The undersigned is attorney for Jimmie Fidler, having represented him in the preparation of Agreement dated February 4, 1944, between himself and Bobbe.

Jimmie has just handed to me your letter to him dated May 10, 1944, enclosing certified copy of Decree of Divorce, dated March 20, 1944, filed May 6, 1944, in the above-entitled case.

The various orders included in said decree are all consistent with the terms of said agreement dated February 4, 1944, except the following, to wit:

“It Is Further Ordered, Adjudged and Decreed that the defendant shall pay to the plaintiff, in accordance with the terms of said Settlement Agreement, the sum of Eight Hundred (\$800.00) Dollars per month, commencing forthwith and continuing for a period of five years.”

The Agreement provides for payments of \$500.00 per month to and including August 1, 1948, and for an additional sum of \$300.00 per month providing Jimmie earns between the date of said Agreement and August 1, 1948, from radio contracts, a sum equal to the amount he is now receiving under his present radio contract. Should he lose his radio contract, payments to the extent of \$300.00 per month are waived. Should his compensation under future radio contracts be reduced, monthly payments to the extent of \$300.00 shall be proportionately reduced.

It is therefore suggested that you arrange by stipulation with Clarence A. Eddy to amend the Decree of Divorce by deleting the foregoing quoted portion and by inserting in lieu thereof the follow-

ing paragraphs which correctly set forth the understanding and agreement of the parties:

“It Is Further Ordered, Adjudged and Decreed, that defendant shall pay to plaintiff in accordance with the terms of said Settlement Agreement the sum of Eight Hundred (\$800.00) Dollars per month commencing forthwith and continuing for a period of four years and five months, the last monthly payment becoming due and payable on August 1, 1948, providing, however, that should defendant, at any time before August 1, 1948, not have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, monthly payments to the extent of the sum Three Hundred (\$300.00) Dollars of said sum of Eight Hundred (\$800.00) Dollars per month, shall be reduced in proportion to the amount of the reduction of his present radio contract, and should defendant have no radio contract at all, between the date hereof and said August 1, 1948, then monthly payments to the extent of the sum of Three Hundred (\$300.00) Dollars per month of said sum of Eight Hundred (\$800.00) Dollars per month, shall be waived and shall not be made to plaintiff by defendant, and defendant shall not be required at any future time to pay to plaintiff the balance of any reduced, or waived, payments hereunder.

“It Is Further Ordered, Adjudged and Decreed, that all executory provisions of said Settlement Agreement which are not incorporated in this Decree in a plenary manner, are hereby declared to

be binding on the respective parties hereto, and each of said parties is hereby ordered to do and perform all acts and obligations required to be done or performed by said executory provisions of said Settlement Agreement.”

When the Decree is amended in accordance with the foregoing suggestions, I would appreciate your mailing to me a certified copy of same for delivery to Jimmie.

Very truly yours,

VINCENT C. HICKSON.

VCH/LP

EXHIBIT No. 6

Law Offices of
Wiley & Ralli
Western Union Building
Las Vegas, Nevada

May 22, 1944.

Burke, Hickson, Burke & Marshall,
Attorneys at Law,
Suite 720 Rowan Building,
458 South Spring Street,
Los Angeles 13, California.

Attention: Mr. Vincent C. Hickson.
Re: Fidler vs. Fidler.

Dear Mr. Hickson:

Thank you for your letter of May 18th.
I have taken the matter up with my partner,

Roland H. Wiley, who handled the above-entitled case in Ely, Nevada, and he assured me that the inconsistency of the provision mentioned in your letter was due to inadvertence.

We are taking the matter up with Mr. Eddy and we will be glad to send, in due course, the modification that you require.

Hoping to have some business relations between our firms in the future, I remain,

Sincerely yours,

WILEY & RALLI,

By /s/ PAUL RALLI.

PR:MWD

EXHIBIT No. 7

August 31, 1944.

Paul Ralli, Esq.,
Attorney at Law,
Las Vegas, Nevada.

Re: Fidler vs. Fidler, No. 4771, in the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine.

Dear Sir:

On May 18, 1944, I wrote to you suggesting certain amendments in the Decree of Divorce in the above-entitled case. On May 22, 1944, you answered

and advised that the decree would be modified as I required.

If the amendment has been made as suggested, I would appreciate a certified copy of the Decree, as amended. If the amendment has not been made to date, I would appreciate your taking steps to cause the amendment to be made at your most early opportunity.

Very truly yours,

VINCENT C. HICKSON.

VCH/LK

Dictated but not read by Mr. Hickson.

EXHIBIT No. 8

Law Offices of
Wiley & Ralli
Western Union Building
Las Vegas, Nevada

September 7th, 1944.

Vincent C. Hickson,
Attorney at Law,
Suite 720, Rowan Building,
458 South Spring Street,
Los Angeles 13, California.

Dear Mr. Hickson:

I am sorry for the delay in modifying the Fidler decree. I turned this matter over to my partner and I presumed that it was taken care of.

If you will send me a copy of the decree in the way you wish it modified, I will forward it immediately to the court in Ely and have the judge sign an amended decree.

Sincerely,

WILEY & RALLI,

By /s/ PAUL RALLI.

PR:LK

EXHIBIT No. 9

September 8, 1944.

Paul Ralli, Esq.,
Attorney at Law,
Western Union Building,
Las Vegas, Nevada.

Re: Fidler vs. Fidler.

Dear Sir:

Enclosed herein please find five copies of the proposed amended Decree of Divorce, to be signed and filed in the above action. After the amended Decree is filed, one copy should be certified and returned to me. The extra copies are for your files and Mr. Edy's files.

Very truly yours,

VINCENT C. HICKSON.

VCH/LK

Encls.

EXHIBIT No. 10

September 19, 1944.

Paul Ralli, Esq.,
Attorney at Law,
Western Union Bldg.,
Las Vegas, Nevada.

Re: Fidler vs. Fidler.

Dear Sir:

If the Court in Ely has signed and filed the Amended Decree in the above-entitled action, I would appreciate your forwarding certified copy thereof immediately. I have immediate use for the same.

Very truly yours,

VINCENT C. HICKSON.

VCH/LK

EXHIBIT No. 11

October 5, 1944.

Mr. Paul Ralli, Esquire,
Attorney at Law,
Western Union Building,
Las Vegas, Nevada.

Re: Fidler vs. Fidler.

Dear Mr. Ralli:

I must have a certified copy of the amended

decree in the above case for immediate use. Will you please oblige by forwarding same at once.

Very truly yours,

BURKE, HICKSON, BURKE
& MARSHALL,

By /s/ VINCENT C. HICKSON.

VCH:hmj

EXHIBIT No. 12

Law Offices of
Wiley & Ralli
Western Union Building
Las Vegas, Nevada

October 9th, 1944.

Vincent C. Hickson,
Attorney at Law,
458 South Spring Street,
Los Angeles, California.

In re: Fidler v. Fidler.

Dear Mr. Hickson:

I am sincerely sorry for the delay in receiving the modified decree in the above matter. I assure you that I am doing all I can to get this decree.

However, we have to have the cooperation of the attorney who represented Mr. Fidler under the power of attorney, namely, Clarence A. Eddy at Ely, Nevada. We sent him an amended decree on

September 11th and have written to him since emphasizing the importance of having it signed and filed. Up to the present time we have had no response from him. I tried to locate him by telephone today but was unable to do so. I will write him again and if I receive no reply I will contact Judge Watson himself.

Please be assured that we are doing all we can to expedite this matter. Inasmuch as Mr. Eddy has our consent for such modification and he represented Mr. Fidler, why not take this matter up direct with him and ascertain the reason for the delay?

Sincerely,

WILEY & RALLI,

By /s/ PAUL RALLI.

PR:LK

Filed February 13, 1952. T.C.U.S.

[Title of Tax Court and Cause.]

FINDINGS OF FACT AND OPINION

1. An agreement entered into by petitioner (a radio commentator) and his wife on February 4, 1944, provided that he should pay her \$500 per month until September, 1948, and that, in addition thereto, he should pay her \$16,200 in installments of \$300 per month over the same period, the latter

payments to be reduced if his radio income was reduced and to be waived for any months in which he had no radio income. The agreement was adopted and became a part of a divorce decree, which provided that he should pay to his divorced wife "in accordance with the terms of said Settlement Agreement the sum of Eight Hundred (\$800.00) Dollars per month" with the proviso that \$300 of each \$800 monthly payment was subject to reduction in the event of decreased radio earnings. Held, both the \$500 and \$300 components of each \$800 payment made by petitioner during the taxable years and subsequent to divorce decree constituted "installment payments" within the meaning of Section 22 (k), I.R.C., and were therefore not deductible by petitioner under Section 23 (u), I.R.C.

2. Loss sustained by petitioner from the sale in 1945 of certain books and manuscripts purchased in 1937, held to be a loss from the sale of capital assets and subject to the provisions of Section 117 (b) and (d) of the Internal Revenue Code.

Nelson Rosen, Esq., for the petitioner.

W. Lee McLane, Esq., for the respondent.

Respondent determined deficiencies in the income tax of petitioner as follows:

Year	Deficiency
1944	\$ 7,316.60
1945	10,293.79
1946	6,992.74

The questions involved are: (1) Whether the respondent erred in disallowing as deductions payments of \$9,000, \$9,600 and \$9,600 made by petitioner to his divorced wife during the years 1944, 1945 and 1946, and (2) whether the respondent erred in determining that a loss of \$4,750, resulting from the sale by petitioner in 1945 of certain books and manuscripts, was a long-term capital loss subject to the provisions of Section 117 (b) and (d) of the Internal Revenue Code.

This Court has previously considered the issues involved in this proceeding in a Memorandum Opinion entered November 21, 1952, and decision pursuant to our determination therein was entered November 25, 1952. On December 15, 1952, the petitioner filed a motion for reconsideration of the opinion. An order was issued on January 6, 1953, granting the motion for reconsideration, and on January 23, 1953, the decision entered on November 25, 1952, was vacated and set aside. The petitioner's motion for reconsideration was directed to the opinion of this Court on Issue 1, relating to alimony payments, and not to Issue 2, relating to the sale of certain books and manuscripts.

Findings of Fact

Part of the facts have been stipulated, and these stipulated facts are incorporated herein by reference.

Petitioner is a resident of Los Angeles, California. He filed his income tax returns for the calendar years 1944, 1945 and 1946 with the Collector of In-

ternal Revenue for the Sixth District of California at Los Angeles.

In 1936 petitioner was married to Ruth Law Fidler, sometimes known as Roberta Law Fidler and Roberta L. Fidler (hereinafter referred to as "Ruth Fidler").

There was no issue of this marriage, and in 1942 petitioner and Ruth Fidler adopted a newly-born baby girl.

Thereafter, petitioner and Ruth Fidler became separated, and on August 20, 1943, they entered into a written agreement which provided, among other things, that petitioner should have the exclusive custody and control of the minor child, subject to Ruth Fidler's right to reasonable visitation; that upon the execution of the agreement, Ruth Fidler should receive, as her share and in full division of the property of the parties, a certain Packard automobile and \$20,000 in cash or securities; and that, in addition thereto, petitioner would pay to Ruth Fidler, in full and final payment for her support, maintenance and alimony, the sum of \$30,000 in monthly installments of \$500 per month, commencing on September 1, 1943. Petitioner's obligation to make such payments at the rate of \$500 per month to Ruth Fidler for her support and maintenance was evidenced by two promissory notes executed by petitioner and delivered to her, concurrently with the execution of said agreement, and the terms of the notes were set forth in full in said agreement. One of the notes provided for the pay-

ment to Ruth Fidler of the sum of \$18,000, payable in consecutive, monthly installments of \$500 per month commencing on September 1, 1943. The second note provided for the payment of the sum of \$12,000, payable in consecutive, monthly installments of \$500 per month, commencing on October 1, 1946. Each note contained a provision that in the event petitioner defaulted in the payment of any installment when due, the whole note might become immediately due and payable at the option of Ruth Fidler or the holder thereof, and that should suit be commenced to enforce payment of the note, petitioner would pay such additional sums as attorney's fees as the court might adjudge to be reasonable. The \$12,000 note, only, contained the following additional provision:

This promissory note is given by the undersigned to the payee in accordance with an Agreement executed by and between the parties this date, for the support and maintenance of the payee. This note shall become absolutely void and of no effect upon any remarriage of the payee and whether or not such remarriage shall be valid.

The agreement of August 20, 1943, was prepared by a firm of Los Angeles attorneys who represented Ruth Fidler.

On October 21, 1943, an amendment to the agreement of August 20th was executed by petitioner and Ruth Fidler, the effect of which was to eliminate the provision above quoted appearing in the

\$12,000 note, and Ruth Fidler acknowledged receipt of the \$12,000 note, as thus amended, and also the \$18,000 note above referred to.

On December 16, 1943, the aforesaid agreement was again supplemented and amended to provide, in effect, that Ruth Fidler should have exclusive custody and control of the minor child of the parties for a period of six months during each year and that petitioner should have the exclusive custody and control of the child for a like period of six months during each year; and that during such times as Ruth Fidler should have the custody and control of the child petitioner would pay the costs of a nurse, food, clothing and medical expense for the child.

On February 4, 1944, the petitioner and Ruth Fidler entered into a new agreement, which superseded their previous agreements. This new agreement also made provision for the custody and support of the minor child of the parties, and settled all rights and claims in respect of property and support between the parties. It, in substance, provided among other things that each of the parties should have the exclusive custody and control of their minor child for six months during each year, and that petitioner would pay to Ruth Fidler for the care, support and maintenance of the child during the period that she should have its custody and control the sum of \$200 per month as well as any extraordinary medical care and attention required for the child; that in addition to the Packard

automobile and \$20,000 in cash or securities theretofore transferred by petitioner to Ruth Fidler as her share of and in full division of the property of the parties, petitioner agreed to and did transfer to her an additional sum of \$7,000 in cash or securities. In addition to the foregoing, and with respect to alimony, support and maintenance for Ruth Fidler, the agreement provided as follows:

Seventh: In addition to the foregoing, and on account of full and final payment of maintenance and support, alimony and alimony pendente lite to Second Party, and counsel fees and costs in any pending or future action between the parties hereto, First Party does hereby redeliver to Second Party, and Second Party will retain, those two (2) certain promissory notes, being the same notes described in Paragraph First of Amendment to Agreement of August 20, 1943, in words and figures as follows, to wit: * * *

After setting forth, verbatim, the terms of the two promissory notes hereinbefore referred to, as amended on October 21, 1943, the agreement goes on to provide for additional payments in the form of a third promissory note as follows:

In addition to the foregoing and in full and final payment of maintenance and support, alimony and alimony pendente lite to Second Party, and counsel fees and costs in any pending or future action between the parties hereto,

First Party will, upon the execution of the within instrument, make, execute and deliver unto Second Party one (1) promissory note, in words and figures as follows, to wit:

\$16,200.00.

Los Angeles, California,
February 4, 1944.

At the time stated after date, for value received, I promise to pay to Roberta L. Fidler, only at Los Angeles, California, the sum of Sixteen Thousand Two Hundred (\$16,200.00) Dollars, without interest. Principal payable in lawful money of the United States. This note is payable in installments of Three Hundred (\$300.00) Dollars each month, payable upon the first day of each and every calendar month subsequent to the first day of March, 1944, and any default in the payment of any installment when due shall cause the whole note to become immediately due and payable at the option of said Roberta L. Fidler. Should suit be commenced to enforce the payment of this note, I agree to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit. Demand, presentment for payment, protest and notice of protest are hereby waived.

This promissory note is given by the undersigned to the payee in accordance with an Agreement executed by and between the parties this date, on account of the support and maintenance of the payee. Should payor, at any time during the term

hereof, not have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, the monthly installments falling due hereunder during said periods shall be reduced in proportion to the amount of the reduction of his present radio contract, and should payor have no radio contract at all, then all monthly installments falling due hereunder during said period, shall be waived by payee, and payor shall not be required at any future time to pay the balance of any reduced, or waived payments, hereunder.

/s/ JAMES M. FIDLER,
4362 Clybourne Avenue,
Burbank, California.

That Second Party accepts said three (3) promissory notes, for her support and maintenance and not in lieu of property rights, upon the following conditions:

(a) In lieu of other provision for the support and maintenance of Second Party during her natural life;

(b) In full payment, discharge and satisfaction of all obligations or any thereof, on the part of First Party to maintain or support Second Party during her natural life;

(c) In full payment, discharge and satisfaction of counsel fees and costs in any pending or future action between the parties hereto,

other than an action on said or any of said promissory notes.

Eighth: That the installment payments provided in the three (3) promissory notes hereinabove set forth, being taxable to her as income, Second Party will, from and after the date hereof, file such income and tax returns and/or declarations, both Federal and State, as are required by law, and will include therein all such support and maintenance payments received by her, and will pay all taxes shown to be due and payable under such returns and/or declarations.

Should any of the monthly installments provided for in the said \$16,200.00 promissory note, last above described, be reduced or waived and the payor not be required to make same, First Party will give to Second Party, not for her support and maintenance, but as an absolute gift without condition, sufficient moneys to enable Second Party to pay her income taxes, both Federal and State, when due, on support and maintenance payments received from First Party, but not on income received by Second Party in excess thereof, without resort to the support and maintenance payments provided for in the two other promissory notes, above described, it being the intention of the parties hereto that Second Party will, during any period that the payments under said promissory note last above described are reduced or waived, have a net minimum sum of \$500.00 per month for her support and maintenance.

In the preparation and execution of the agreement of February 4, 1944, petitioner and Ruth Fidler were each represented by attorneys of Los Angeles, California.

At the time of the execution of the agreement and for several years prior thereto, petitioner's principal business or occupation was that of radio commentator and newspaper columnist.

The "present radio contract" referred to in the agreement of February 4, 1944 (and in the amended decree of divorce hereinafter referred to), was a contract which was in force on February 4, 1944, and March 20, 1944, between petitioner and the sponsor of a weekly radio broadcast program under which petitioner was engaged to render his services as a commentator and reporter on said weekly radio program. The term of the radio contract was 26 weeks. The sponsor, however, had the option to renew and extend the contract of employment for additional, successive terms of 26 weeks' duration.

In 1944 Ruth Fidler, as plaintiff, instituted an action in the District Court of the State of Nevada in the County of White Pine against petitioner, as defendant, wherein she prayed that she be granted a divorce from petitioner and that the agreement of settlement and separation aforesaid of February 4, 1944, be approved by the court.

Ruth Fidler was represented in said action by a firm of attorneys of Las Vegas, Nevada.

Petitioner never personally appeared in the Nevada divorce action, but authorized an attorney of Ely, Nevada, to appear for him.

The divorce action was tried at Ely, Nevada, on March 20, 1944, and a decree of divorce was rendered in favor of Ruth Fidler against petitioner.

The formal decree of divorce as signed by the judge of the court adjudged and ordered as follows:

Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the marriage relationship now and heretofore existing between plaintiff and defendant be and the same is hereby dissolved and the parties are restored to the status of single persons.

It Is Further Ordered, Adjudged and Decreed that that certain Settlement Agreement entered into between the parties, dated February 4, 1944, be and the same is hereby confirmed, ratified, approved and adopted as a part of this Decree.

It Is Further Ordered, Adjudged and Decreed that the defendant herein have the care, custody and control of the minor child, named Bobbe Fidler, Jr., until October 1, 1944, and thereafter the plaintiff is to have the custody of the child for the next ensuing six months, or until April 1, 1945; thereafter the custody of said child shall be distributed to the parties for six months each, until further order of this Court; that during the term plaintiff has custody of the said minor child, defendant shall pay to her for the care, support and maintenance of said child, the sum of Two Hundred (\$200.00) Dollars per month.

It Is Further Ordered, Adjudged and Decreed that the defendant shall pay to the plaintiff, in accordance with the terms of said Settlement Agree-

ment, the sum of Eight Hundred (\$800.00) Dollars per month, commencing forthwith and continuing for a period of five years.

The Court herewith retains jurisdiction herein with reference to the said minor child for the purpose of making such orders as may hereafter appear to best serve the interest of said minor child.

Dated and Done this 20th day of March, 1944.

HARRY M. WATSON,
District Judge.

The decree was inconsistent and ambiguous, in that while it "confirmed, ratified, approved and adopted as a part" of it the settlement agreement entered into between petitioner and Ruth Fidler on February 4, 1944, and ordered petitioner to make payments to Ruth Fidler "in accordance with the terms of said Settlement Agreement," it also provided that such payments should be "the sum of Eight Hundred (\$800.00) Dollars per month, commencing forthwith and continuing for a period of five years."

When the Los Angeles attorney who had represented petitioner in the preparation of the settlement agreement of February 4, 1944, received a copy of the above decree, he immediately noted the inconsistency of its provisions, and communicated with Ruth Fidler's attorneys in Las Vegas, Nevada, concerning it, and suggested that the decree be amended to reflect correctly the terms of the settlement agreement.

The inconsistency in the decree was due to inadvertence, and Ruth Fidler's attorneys agreed that the decree should be amended. A form of amended decree was prepared, and on September 11, 1944, Ruth Fidler's attorneys sent such form of amended decree to the attorney at Ely, Nevada, who had appeared for petitioner in the divorce action, and requested him to present the proposed amended decree to the court.

Thereafter, on September 18, 1944, upon application of the attorney, the court ordered that the decree of divorce be amended to recite correctly the terms and provisions of the agreement of settlement between petitioner and Ruth Fidler.

An amended decree, as filed on November 16, 1944, contained the exact terms and language as set forth in the original decree above-quoted except that the following paragraph was deleted:

It Is Further Ordered, Adjudged and Decreed that the defendant shall pay to the plaintiff, in accordance with the terms of said Settlement Agreement, the sum of Eight Hundred (\$800.00) Dollars per month, commencing forthwith and continuing for a period of five years.

and in lieu thereof the following paragraphs were substituted:

It Is Further Ordered, Adjudged and Decreed, that defendant shall pay to plaintiff in accordance with the terms of said Settlement

agreement the sum of Eight Hundred (\$800.00) Dollars per month commencing forthwith and continuing for a period of four years and five months, the last monthly payment becoming due and payable on August 1, 1948, providing, however, that should defendant, at any time before August 1, 1948, not have a radio contract under the terms of which he receives a monthly sum equal to the monthly sum he is now receiving under his present radio contract, monthly payments to the extent of the sum of Three Hundred (\$300.00) Dollars of said sum of Eight Hundred (\$800.00) Dollars per month, shall be reduced in proportion to the amount of the reduction of his present radio contract and should defendant have no radio contract at all, between the date hereof and said August 1, 1948, then monthly payments to the extent of the sum of Three Hundred (\$300.00) Dollars per month of said sum of Eight Hundred (\$800.00) Dollars per month, shall be waived and shall not be made to plaintiff by defendant, and defendant shall not be required at any future time to pay to plaintiff the balance of any reduced, or waived, payments hereunder.

It Is Further Ordered, Adjudged and Decreed, that all executory provisions of said Settlement Agreement which are not incorporated in this Decree in a plenary manner, are hereby declared to be binding on the respective

parties hereto, and each of said parties is hereby ordered to do and perform all acts and obligations required to be done or performed by said executory provisions of said Settlement Agreement.

The amended decree was dated and signed by the same judge who had tried the divorce action and signed the original decree, in the following fashion:

Dated and Done this 20th day of March, 1944.

/s/ HARRY M. WATSON,
District Judge.

On and prior to March 20, 1944, petitioner had paid and transferred to Ruth Fidler all moneys and properties due to her under the terms of the settlement agreement of February 4, 1944, had paid certain sums required to be paid to her attorneys for representing her, and had made all payments to her which had then become due and payable to her pursuant to the terms of the promissory notes referred to and described in the agreement. After March 20, 1944, and during the years 1944, 1945 and 1946, petitioner also paid Ruth Fidler all sums which he was obligated to pay to her under the terms of the settlement agreement and the decree of divorce for the care, support and maintenance of the minor child of the parties. In addition to the foregoing, petitioner, pursuant to the terms of the agreement and decree, paid to Ruth Fidler as alimony and for her support and maintenance the

sum of \$800 each month during the period commencing April 1, 1944, and ending December 31, 1946.

The divorce decree as amended remained in full force and effect during the years 1945 and 1946.

During the period from February 4, 1944, to December 31, 1946, the sponsor of the weekly radio broadcast program hereinbefore referred to, to whom petitioner was under contract on February 4, and March 20, 1944, exercised its option to renew and extend said contract with the result that petitioner was continuously employed by this sponsor during this period and received, under the contract and the renewals and extensions thereof, monthly compensation equal to the monthly compensation which he had been receiving under said radio contract on February 4 and March 20, 1944.

On his income tax return for the calendar year 1944, petitioner claimed deductions in the sum of \$9,000 by reason of alimony payments made to Ruth Fidler during said year. Of this sum, \$1,800 was paid by petitioner prior to the rendition of the decree of divorce on March 20, 1944, and at the trial of this proceeding, petitioner conceded that such sums aggregating \$1,800 paid prior to the decree of divorce would not be properly deductible by him.

In his income tax returns for the calendar years 1945 and 1946 petitioner claimed deductions in each year in the sum of \$9,600 by reason of the alimony payments made to Ruth Fidler during those years.

Respondent, in his notice of deficiency, disallowed the deductions claimed in each year upon the ground that "said amounts do not qualify as proper deductions under the provisions of section 23(u) of the Internal Revenue Code."

In the year 1937, petitioner acquired by assignment and transfer from William N. Selig a stock of literary properties consisting of all of Selig's literary rights, motion picture rights and other property rights, of every kind and nature, in approximately seventy-five published novels and stage plays, and approximately 2,000 original manuscripts, scenarios, and motion picture shooting scripts. Petitioner paid Selig \$5,000 for these properties.

A Mr. Bentel, who was a literary agent and friend of petitioner, induced petitioner to buy the literary properties. Bentel advised petitioner that Selig was in failing health and was willing to sell these properties at what Bentel considered to be a reasonable price because among them were some properties which Bentel believed were quite good and which might be sold to motion picture studios at a profit.

Petitioner had an oral understanding with Bentel that Bentel would conduct a campaign to sell the stories, books, or plays, and that after petitioner recouped his \$5,000 investment from such sales, he and Bentel would thereafter divide the returns on a "fifty-fifty" basis.

After the literary properties were acquired, a tabulation was made of them, and they were placed on display in the offices of Bentel.

Petitioner purchased the literary properties with the intention of attempting to sell some of them at a profit. They were not purchased for use in his work as a commentator or columnist, and none of them was ever used in such work. No sale of any of the literary properties was consummated prior to 1945, although at one time petitioner and Bentel thought a studio was going to purchase a book entitled "Under Two Flags." In 1945, petitioner sold all of the literary properties acquired from Selig for \$250, to Eric Ergenbright, who was, and had been, an employee of petitioner for many years.

In his income tax return for the year 1945, petitioner claimed a deduction in the amount of \$4,750 as an ordinary loss. In determining the deficiency the respondent disallowed the claimed deduction stating that the "ordinary loss claimed of \$4,750.00 from sale of Selig Library of books and manuscripts has been determined to be a loss from the sale of capital assets held for more than six months and subject to the provisions of section 117(b) and (d) of the Internal Revenue Code."

Opinion

Raum, Judge:

1. Petitioner seeks to deduct the payments of \$800 a month made by him to his divorced wife, Ruth Fidler, in accordance with the divorce decree

and the agreement between them adopted as part of the decree. Section 23(u) of the Internal Revenue Code¹ allows a divorced husband to deduct payments made by him to his divorced wife which are includible in her gross income under Section 22(k).² The issue herein is whether the payments in controversy were "installment payments discharging a part of an obligation the principal sum of

¹Sec. 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions:

* * *

(u) Alimony, Etc., Payments.—In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. * * *

²Sec. 22. Gross Income.

* * *

(k) Alimony, Etc., Income.—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments * * * received subsequent to such decree in discharge of, * * * a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, * * * Installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree or instrument shall not be considered periodic payments for the purposes of this subsection; except that an installment payment shall be considered a periodic payment for the purposes of this sub-

which is, in terms of money or property, specified in the decree or instrument" incident to such decree. If they were such "installment payments," then they are not taxable to the divorced wife as income under Section 22(k), nor are they deductible by the husband under Section 23(u). Respondent contends that the \$800 monthly payments constitute nondeductible "installment payments," and, in the alternative, that \$500 of each \$800 payment is nondeductible.

We think it clear that the \$800 monthly payments required by the divorce decree, as amended, consisted of two separate components of \$500 and \$300, each. Petitioner was obligated to pay \$500 a month unconditionally for 53 months, the unexpired period covered by the first two notes under the separation agreement; moreover, he was obligated to pay an additional \$300 a month for the same period, depending upon his employment as a radio commentator. If he should fail to obtain subsequent radio contracts, the obligation in relation to the \$300 payments was to cease; if he should obtain such contracts with reduced compensation, his obligation to the extent of \$300 monthly was to be diminished proportionately. That the \$800 payments consisted of these two separate parts is plain

section if such principal sum, by the terms of the decree or instrument, may be or is to be paid within a period ending more than 10 years from the date of such decree or instrument, but only to the extent that such installment payment for the taxable year of the wife * * * does not exceed 10 per centum of such principal sum. * * *

not only from the face of the decree, but also from the separation agreement which was explicitly incorporated into the decree by reference.³

The obligation set forth in the decree was stated to be "in accordance with the terms of * * * [the] Settlement Agreement" of February 4, 1944, and the decree itself expressly approved and "adopted" the agreement as part of the decree. And in the separation agreement, which was thus made part of the decree, petitioner agreed to redeliver to his wife two promissory notes calling unconditionally for payments of \$500 a month. These notes were set forth verbatim in the agreement. In addition the agreement required petitioner to execute and deliver a third note, payable in installments of \$300 a month over the remaining period covered by the first two notes. The third note, also set forth verbatim in the agreement, explicitly provided for reduction or elimination of the payments thereunder, depending upon petitioner's earnings under radio contract.

We are satisfied that to the extent of \$500 a month petitioner's payments are "installment pay-

³Compare *Edward Bartsch*, 18 T.C. 65, 69 (affirmed, ..F. 2d ..(C.A.2)): * * * The plan of payment may have been a single plan, but we do not think that requires us to press the payments under both paragraphs in the same mold when the parties themselves have differentiated them. * * *

The divorce decree wrought no change in the tax aspects of the situation. It did no more than carry over into the decree the unfulfilled obligations of petitioner and Sarah under the separation agreement, * * *.

ments” and therefore not deductible. As was said in *Estate of Frank P. Orsatti*, 12 T.C. 188, 191-192:

* * * it is of no importance that under the settlement agreement one must multiply the specified weekly payments by the number of weeks over which they were to be paid to determine the principal sum specified. There is at best only a formal difference between such a decree and one where the total amount is expressly set out. * * *

See also *Frank R. Casey*, 12 T.C. 224, 226; *Harold M. Fleming*, 14 T.C. 1308, 1311.

To the extent of \$300 a month it is at least equally obvious that there was a “principal sum” within the meaning of the statute. The obligation to that extent had its inception in the agreement of February 4, 1944, and the third note given pursuant thereto. The note was in the principal amount of \$16,200. Petitioner specifically promised to pay to his wife “the sum of Sixteen Thousand, Two Hundred (\$16,200.00) Dollars, without interest,” in installments of \$300 on the “first day of each * * * month subsequent to the first day of March, 1944.” The agreement (and notes set forth therein) were explicitly made part of the decree,⁴ and it is difficult

⁴To the extent that there may be any conflict between provisions of the agreement and other parts of the decree, it is abundantly clear that it was the intention that the agreement was to be controlling. In one respect in which there was such a discrepancy, the decree was thereafter amended to conform to the agreement, as shown in our findings.

to see why we do not have here "installment payments discharging a part of an obligation the principal sum of which is * * * specified in the decree or instrument." The words of the statute are plain, and it is clear that the present situation is covered by those words.

Petitioner stresses the fact that his liability in respect of the \$300 payments could be reduced or eliminated if he should fail to obtain future radio contracts with at least the same level of earnings. True, such contingency did exist. But we can find nothing in the language of the statute or the legislative history that would justify refusing to apply the clear statutory provision. A similar contention was considered and rejected in *J. B. Steinel*, 10 T.C. 409; *Estate of Frank P. Orsatti*, *supra*; *Harold Fleming*, *supra*. In *John H. Lee*, 10 T.C. 834, and *Roland Keith Young*, 10 T.C. 724, relied upon by petitioner, no "principal sum" was specified anywhere, and the fluctuating character of the payments was such that it was not thought reasonably possible to spell out a principal sum of an obligation. The *Lee* and *Young* cases were relied upon by the petitioners in the *Orsatti* case, but we held that they "are distinguishable upon the terms of the instruments involved in those cases." 12 T.C. at p. 192.

We are aware that the Court of Appeals for the Second Circuit has recently reversed our decision in *F. Ellsworth Baker*, 17 T.C. 1610, and has rejected

the theory of the Steinel case. 205 F. 2d 369. We have therefore carefully re-examined our decision in the Steinel case, but can find no basis in the statute for refusing to give effect to its plain language. Notwithstanding the great respect that we have for the Court of Appeals, we feel that we must continue to adhere to the theory of the Steinel case. Cf. *American Coast Line v. Commissioner*, 159 F. 2d 665, 668-669 (C.A. 2); *Estate of William E. Edmonds*, 16 T.C. 110, 117.

2. The remaining issue relates to the loss of \$4,750 sustained by petitioner upon the sale in 1945 of the books and manuscripts he acquired from Selig.

The petitioner contends that the respondent erred in treating the loss sustained as a long-term capital loss from the sale or exchange of "capital assets"; that the literary properties sold fell within those types of property which were expressly excluded from "capital assets" in Section 117(a)(1), i.e., "stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business * * *;" and that the loss was an ordinary business loss deductible in full under the provisions of Section 23(e).

Section 23(e) provides that in computing net income of individuals there shall be allowed as deductions losses sustained during the taxable year (1) if

incurred in trade or business; or (2) if incurred in any transaction entered into for profit, though not connected with trade or business. Section 23(g) provides that losses from sales of capital assets shall be allowed only to the extent provided in Section 117.⁵

⁵Sec. 117. Capital Gains and Losses.

(a) Definitions.—As used in this chapter—

(1) Capital Assets.—The term “capital assets” means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(A) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(B) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 23(1), or real property used in his trade or business;

* * *

(5) Long-Term Capital Loss.—The term “long-term capital loss” means loss from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such loss is taken into account in computing net income;

(b) Deduction From Gross Income.—In the case of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 per centum of the amount of such excess shall be a deduction from gross income. * * *

* * *

(d) Limitation on Capital Losses.—

* * *

Petitioner bought the literary properties in question from William N. Selig in 1937 and sold them in 1945. During that eight-year period he never consummated a sale of any of them. While he testified that he and Bentel made efforts to sell various books and stories to some of the motion picture studios, when asked on cross-examination to name some of the prospects approached regarding their sale, he replied:

A. I don't know that I could specify with stories, to which studios. There were several stories involved, several books involved, and some of them were hot and some were cold. One in particular that was hot, that we though was sold, was a book called "Under Two Flags." I believe that was the title.

The book called "Under Two Flags," Mr. Bentel and I both believed that the sale—and I think the sale was to have been to RKO, we both believed the sale was in the bag. About that time another studio made a motion picture, which they titled "Under Two Flags," and it kayoed, or whatever you want to call it—it stopped our sale.

(2) Other Taxpayers.—In the case of a taxpayer, other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus the net income of the taxpayer or \$1,000, whichever is smaller. For purposes of this paragraph, net income shall be computed without regard to gains or losses from sales or exchanges of capital assets. If the tax is to be computed under Supplement T, "net income" as used in this paragraph shall be read as "adjusted gross income."

It is upon such evidence that the petitioner relies to show that he was engaged in trade or business with respect to the literary properties. We are satisfied on the record before us that petitioner's only business or occupation was that of radio commentator and newspaper columnist. He did not purchase the literary properties for use in that business. While it is true that an individual may engage in more than one business, he has not established that he did so. He made an investment in the literary properties with the hope or expectation of selling them at a profit. That hope or expectation was never realized during the period from 1937 to 1945. The only sale of any of these properties ever made by him was the sale in 1945 to one of his employees. He may have held them for sale, but not "primarily for sale to customers in the ordinary course of his trade or business." He did not or could not show any activity from which we can find that he engaged in a trade or business with respect to the literary properties. Neither did he show that these properties constituted stock in trade or property of a kind which would properly be included in inventory. See Section 22(c), Internal Revenue Code. The properties in which he invested were held by him for more than six months, and inasmuch as he has not proved that they fell within the types of property excluded from the term "capital assets" in Section 117(a)(1), the respondent did not err in determining that the loss sustained upon their sale was a loss from the sale of capital assets and subject to the provisions of Section 117

(b) and (d). Had petitioner sold the literary properties at a profit, he would no doubt have claimed that they were capital assets and that he would have been entitled to the favorable treatment accorded to capital gains. We think that these properties did constitute capital assets, and that petitioner must accept whatever tax disadvantages attach to such assets when they are sold at a loss.

Review by the Court.

Decision will be entered for the respondent.

Served September 25, 1953.

The Tax Court of the United States
Washington

Docket No. 27910

JAMES M. FIDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated September 25, 1953, it is

Ordered and Decided: That there are deficiencies in income tax as follows.

Year	Deficiency
1944	\$ 7,316.60
1945	10,293.79
1946	6,992.74

/s/ ARNOLD RAUM,
Judge.

Entered Sept. 29, 1953.

Served Sept. 30, 1953.

In the United States Court of Appeals
for the Ninth Circuit

Tax Court Docket No. 27910

JAMES M. FIDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR REVIEW OF DECISION
OF THE TAX COURT OF THE UNITED
STATES

The petitioner and taxpayer in this cause, James M. Fidler, hereby petitions for a review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United

States rendered and entered in the above-entitled cause on September 29, 1953, 20 T.C. . . . , No. 149, determining deficiencies in the petitioner's federal income taxes for the calendar years 1944, 1945 and 1946 in the respective amounts of \$7,316.60, \$10,293.79 and \$6,992.74.

On January 31, 1950, the Commissioner of Internal Revenue mailed to the petitioner a notice of deficiencies in taxes for said years and statement. Within ninety days thereafter and on April 26, 1950, the petitioner filed a petition with The Tax Court of the United States for redetermination of said deficiencies in taxes under the provisions of Section 272 of the Internal Revenue Code. The decision of The Tax Court sustaining the deficiencies in taxes was entered on September 29, 1953.

The controversy involves the proper determination of the petitioner's liability for federal income taxes for the calendar years 1944, 1945 and 1946 and presents the following questions: (1) whether the petitioner was entitled to deduct alimony payments of \$9,000, \$9,600 and \$9,600 made by petitioner to his divorced wife during the years 1944, 1945 and 1946, and (2) whether the petitioner was entitled to deduct in full a loss of \$4,750 resulting from the sale by him in 1945 of certain books and manuscripts.

The petitioner is a resident of Los Angeles, California. The review from said decision is sought in the United States Court of Appeals for the Ninth

Circuit in which circuit is located the collector's office, namely, Collector of Internal Revenue for the Sixth District of California, Los Angeles, California, to which the petitioner made his federal income tax returns for the calendar years 1944, 1945 and 1946, and which are the returns in respect of which the deficiencies arise. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

Dated this 15th day of December, 1953.

/s/ RAYMOND C. SANDLER,

/s/ NELSON ROSEN,

Counsel for Petitioner,
James M. Fidler.

Affidavit of Service by Mail attached.

Filed December 18, 1953, T.C.U.S.

[Title of Court of Appeals and Cause.]

Tax Court Docket No. 27910

NOTICE OF FILING OF PETITION
FOR REVIEW

To: Commissioner of Internal Revenue, Washington, D. C., and to Daniel A. Taylor, Esquire, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

Please Take Notice that the petitioner in the above-entitled matter, James M. Fidler, has filed with the Clerk of The Tax Court of the United States a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States rendered and entered in the above-entitled cause on September 29, 1953.

A copy of said Petition for Review is herewith attached and served upon you.

Dated this 15th day of December, 1953.

/s/ RAYMOND C. SANDLER,

/s/ NELSON ROSEN,

Counsel for Petitioner,
James M. Fidler.

Received and Filed December 18, 1953, T.C.U.S.

RESPONDENT'S EXHIBIT E
Admitted in evidence February 5, 1952.

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

3011985 1944

or fiscal year beginning _____, 1944, and ending _____, 1945

Do not write in these spaces

TAX COURT OF THE U.S.
DOCKET 2-254
ADMITTED IN EVIDENCE
Los Angeles, Calif.
FEB 5 - 1952
EXHIBIT E
PLAINTIFFS
DEFENDANTS

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

File Code 916
Serial No.
District 6-Calif
(Cashier's Stamp)
REC'D WITH REMITTANCE

NAME James M. Fidler
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

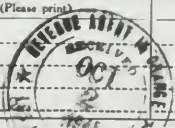
ADDRESS 1759 N. Gower
(PLEASE PRINT. Street and number or rural route)

Hollywood Calif.
(City or town, postal zone number) (State) Social Security No. (if any)

95 JAN 13 1945
COLL. INT. REV.
8th DIST. CAL.

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

NAME (Please print)	Relationship	NAME (Please print)	Relationship
Your name James M. Fidler			
Bobbie Fidler, Jr.	Daughter		



2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expense, see Instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT
		\$

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) 7958.41

4. If you received any other income, give details on page 3 and enter the total here 67815.67

5. Add amounts in items 2, 3, and 4, and enter the total here 75774.08
If item 5 includes income of both husband and wife, show husband's income here, \$ _____; wife's income here, \$ _____

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of those classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4 38082.35

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Form W-2) 28431.66
(B) By payments on 1944 Declaration of Estimated Tax 28431.66
Enter total here \rightarrow 9650.69

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here 9650.69

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here 9650.69
Check (✓) whether you want this overpayment: Refunded to you or Credited on your 1945 estimated tax

You filed a return for a prior year, what was the latest year? 1943
which Collector's office was it sent? Los Angeles
which Collector's office did you pay amount claimed in item 7 (B), above? Los Angeles

Is your wife (or husband) making a separate return for 1944? (Yes = "Yes")
If "Yes," write below:
Name of wife (or husband)
Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Glenn Brownfield
(Signature of person (other than taxpayer or agent) preparing return)

Jan. 13, 1945
(Date)

James M. Fidler
(Signature of taxpayer) (Print)

904 Financial Center Bldg.
Los Angeles 14 TRINITY 4171

(SEE TAX TABLE BELOW)

(If this is a joint return of husband and wife, it must be signed by both)

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	\$		4. Total amount received this year	\$	
2. Amount received tax-free in prior years			5. Excess, if any, of line 4 over line 3		
3. Remainder of your cost (line 1 less line 2)	\$		6. Enter line 5, or 3 percent of line 1, whichever is greater	\$	

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (explain in Schedule G)	
4354 Clybourne Apartment House	\$ 560.00	\$ 264.53	\$	\$ 270.31	
	6435.00	1264.40	2643.26	3511.70	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$ 6995.00	\$ 1528.93	\$ 2643.26	\$ 3782.01	959.20

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

(State (1) nature of business; (2) business name)

1. Total receipts	\$	
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C," or "C or M," on line 2 and 3 if inventories are valued at either cost, or cost or market whichever is lower)		
2. Inventory at beginning of year	\$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (explain in Schedule G)		
7. Total of lines 2 to 6	\$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 less line 8)	\$	
10. Gross profit (line 1 less line 9)	\$	
OTHER BUSINESS DEDUCTIONS		
11. Salaries and wages not included as "Labor"	\$	
12. Interest on business indebtedness		
13. Taxes on business and business property		
14. Losses (explain in Schedule G)		
15. Bad debts arising from sales or services		
16. Depreciation, obsolescence and depletion (explain in Schedule F)		
17. Rent, repairs, and other expenses (explain in Schedule G)		
18. Amortization of emergency facilities (attach statement)		
19. Net operating loss deduction (attach statement)		
20. Total of lines 11 to 19	\$	
21. Total of lines 9 and 20		See Separate Schedule
22. Net profit (or loss) (line 1 less line 21)		67025.48

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	849.39
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.	Amount, \$	
Name and address of estate or trust	Amount,	
Other sources (state nature)	Amount,	
Total		

Total income from above sources (Enter as item 4, page 1) \$ 67815.67

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		\$			\$

2E

Schedule D (Form 1040)

U. S. TREASURY DEPARTMENT
Internal Revenue Service

SCHEDULE OF GAINS AND LOSSES
FROM SALES OR EXCHANGES OF (1) CAPITAL ASSETS AND (2) PROPERTY OTHER THAN CAPITAL ASSETS

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1944

Or fiscal year beginning _____, 1944, and ending _____, 1945
(See instructions on other side)

Name of taxpayer James M. Fidler
Address 1759 N. Gower Hollywood, Calif.

(1) CAPITAL ASSETS

Kind of property (if necessary, attach statement of descriptive data not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	8. Gain or loss (column 4 plus column 7 less the sum of columns 3 and 6)	9. Gain or loss to be taken into account	
								Percentage	Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
100 Long Bell	10/25/43							100	
		1/14/44	5886.60	5875.90			10.70	100	10.70
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									\$ 10.70

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS									
Mer. Snuff	4/10/39	3/14/44	4170.66	6148.40			1977.74	50	988.87
Bodyear	4/4/43	6/6/44	10858.13	9735.00			1118.13	50	559.07
Mer. Snuff	4/19/40	11/27/44	4502.12	6500.05			2197.93	50	1098.97
4354	4/17/40	8/3/44	12500.00	9562.96		1628.51	4565.55	50	2282.78
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									\$ 838.69

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from column 8, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary			
		(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss		
		Net short-term capital gain or loss		\$ 10.70				\$ 10.70	
Net long-term capital gain or loss		\$ 838.69				\$ 838.69			
Total net gain or loss (Enter on line 1, Schedule D, page 3, Form 1040.)								\$ 849.39	

Net gain or loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 3, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 2, Form 1040, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest.)

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss, and line 5, page 4, Form 1040, exceeds \$16,000

Income (line 3, page 4, Form 1040)	\$ 63725.12		
Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), less line 1, column (b), of summary above)	838.69	10. Normal tax (3% of line 9)	\$ 1871.59
Binary net income (line 1 less line 2)	\$ 62886.43	11. Partial tax (line 6 plus line 10)	\$ 37663.01
Surplus: Surtax exemptions (line 4, page 4, Form 1040)	1000.00	12. 50% of line 2	419.34
Surplus: Surtax net income	\$ 61886.43	13. Alternative tax (line 11 plus line 12)	\$ 38082.35
Surplus: Tax on line 5. (See Surtax Table in Form 1040 instructions)	\$ 35791.42	14. Total normal tax and surtax (line 6 plus line 10, page 4, Form 1040)	\$ 38342.34
Surplus: Binary net income (line 3, above). (If partially tax-exempt interest is included, see Tax Computation instructions on page 4 of Form 1040 instructions)	\$ 62886.43	15. Tax liability (line 13 or line 14, whichever is the lesser). (Enter on line 11, page 4, Form 1040)	\$ 38082.35
Surplus: Normal-tax exemption (line 8, page 4, Form 1040)	500.00		
Surplus: Amount subject to normal tax	\$ 62386.43		

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
Total net gain (or loss) (enter on line 2, Schedule D, page 3, Form 1040)						

Any item in this schedule was acquired by you otherwise than by purchase, attach a statement explaining how acquired.

James M. Fidler
 1944 Income Tax—Los Angeles
 Schedule "C"

Income:

Radio program		\$103,500.00
Syndicated column		9,304.80
Miscellaneous (sound tract)		1,000.00
		<u>113,804.80</u>

Expense:

Office	\$ 4,579.42	
Automobile	692.63	
Social Security Tax paid on employees	463.33	
Publicity, entertainment, etc.	1,768.87	
Subscriptions to publications	137.09	
Columns and stories purchased from others	6,801.50	
Salaries of staff	18,766.48	
Attorney fees	2,320.00	
Agent	10,350.00	45,879.32
		<u>45,879.32</u>
Net		\$ 67,925.48

Schedule "G"

Other expense:

Gardner	\$ 153.10
Water	33.57
Manager—Apartment house	600.31
Gardner—Apartment house	140.00
Gas	378.65
Water and electricity	742.19
Miscellaneous	32.51
Laundry	510.66
Telephone	66.86
Refrigerator service	72.00
Cleaning	12.99
Replacements	115.56
Insurance	242.82
Taxes	680.79
Total	<u>\$ 3,782.01</u>

Repairs:

Plumbing	\$ 121.78
Painting	2,500.00
Electric	21.48
Total	<u>\$ 2,643.26</u>

Do not itemize deductions if—(1) You determine your tax from the tax table on page 2, or
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions,
 the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

		Amount
Contributions	Childrens Home Society	5.00
	Hospital	10.00
	L. A. War Chest	250.00
	Christmas Seals	10.00
	Agusta Ga. Children's Home	200.00
	Salvation Army	10.00
	Allowable Contributions (not in excess of 15 percent of item 5, page 1)	\$ 485.00
Interest		\$
	Security First National Bank	30.03
	Total Interest	30.03
Taxes	Automobile License	9.90
	New Mexico R. E.	24.19
	California State Income Tax	1148.09
	Club Dues Tax	33.60
	L. A. County Real Estate Taxes	1840.85
	Sales Tax (Calif. State)	77.80
	Total Taxes	2533.93
Losses from fire, storm, shipwreck, or other casualty, or theft		\$
	Total Allowable Losses (not compensated by insurance or otherwise)	\$
Medical and dental expenses		\$
	Net Expenses (not compensated by insurance or otherwise)	\$
	Enter 5 percent of item 5, page 1, and subtract from Net Expenses	\$
	Allowable Medical and Dental Expenses. See Instruction for limitation	\$
Miscellaneous (including alimony, amortizable bond premium, special deduction for the blind, etc.)		\$
	Alimony	9000.00
	Total Miscellaneous Deductions	9000.00
	TOTAL DEDUCTIONS	\$ 12048.96

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income.	\$ 75774.08
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500).	12048.96
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income.	\$ 63725.12
4. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1).	1000.00
5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income.	\$ 62725.12
6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here.	\$ 36445.59
7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions).	\$ 63725.12
8. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions).	500.00
9. Subtract line 8 from line 7, and enter the difference here.	\$ 63225.12
10. Enter here 3 percent of line 9. This is your Normal Tax.	\$ 1896.75
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D).	\$ 38082.34
If you used the \$500 standard deduction in line 2, disregard lines 12, 13, & 14, and copy on line 15 the same figure you entered on line 11	
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$
13. Enter here any income tax paid at source on tax-free covenant bond interest	\$
14. Add the figures on lines 12 and 13 and enter the total here.	\$
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax.	\$ 38082.35

CE

RESPONDENT'S EXHIBIT F

Admitted in evidence February 5, 1952.

March 15, 1946. Any balance of tax instructions for filling out return.

FORM 1040

Treasury Department Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1945

90991345

or fiscal year beginning 1945, and ending 1946

EMPLOYEES—Instead of this form, you may use your Withholding Receipt, Form W-2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these

File Code 778

Serial No.

District 6021 (Cashier's Stamp)

RECEIVED

MAR 15 1946

COLL. INT. REV. LOS ANGELES, CA

NAME James M. Fidler (PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 1759 N. Gower (PLEASE PRINT. Street and number or rural route)

Hollywood 28 Los Angeles Calif. (City or town, postal zone number) (County) (State)

Occupation Commentator & Columnist Social Security No.

List your own name

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1945 income of more than \$500 who received more than one-half of their support from you, and who are dependent relatives of both.

1. Name (please print) James M. Fidler Your name Bobbe Fidler Jr

THE TAXIDOLANT FOR THE DOCKET ADMITTED IN EVIDENCE FEB 5 - 1952



Enter your total wages, salaries, bonuses, commissions, and other income received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, or rebursed expenses, see instruction 2.

Table with 3 columns: Print Employer's Name, Where Employed (City and State), Amount. Entry: Wm. Morris Agency, Hollywood Calif, \$ 1500.00

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) Enter total here -> \$ 1500.00

4. If you received any other income, give details on page 2 and enter the total here. 9293.23

5. Add amounts in items 2, 3, and 4, and enter the total here. 63001.43

If item 5 includes incomes of both husband and wife, show husband's income here, \$; wife's income here, \$ 73794.66

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and itemize deductions, the other must also itemize deductions.

6. Enter your tax from table on page 4, or from line 15, page 3. \$ 35077.52

7. How much have you paid on your 1945 income tax? (A) By withholding from your wages \$ 336.40 (B) By payments on 1945 Declaration of Estimated Tax \$ 37331.23 Enter total here -> 37667.63

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here. \$

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here. \$ 2590.11 Check (✓) whether you want this overpayment: Refunded in you [] or Credited on your 1946 estimated tax [✓]

If you filed a return for a prior year, what was the latest year? 1944 To which Collector's office was it sent? Los Angeles To which Collector's office did you pay amount claimed in item 7 (B), above? Los Angeles Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Glenn Brownfield 3/9/46 (Signature of preparer) (Date) James M. Fidler 3/9/46 (Signature of taxpayer) (Date)

(Name of firm or employer, if any) Los Angeles 14, Calif. (If this is a joint return of husband and wife, it must be signed by both.)

Handwritten notes: 3, Your Exemptions, 659, Your Income 700, How to Figure Your Tax, Tax Due or Refund 6



Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	\$	4. Total amount received this year	\$
2. Amount received tax-free in prior years	\$	5. Excess, if any, of line 4 over line 3	\$
3. Remainder of your cost (line 1 less line 2)	\$	6. Enter line 5, or 3 percent of line 1, whichever is greater <small>(Attach separate schedule for each additional annuity or pension)</small>	\$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (explain in Schedule G)
Apartment house	6620.00	1264.40	1004.06	2962.18
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$	\$	\$	\$

1389.30

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

(State (1) nature of business. Commentator and Columnist business name.)

See Schedule C Attached

1. Total receipts COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "I" or "M" on lines 2 and 3 if inventories are valued at either cost, or cost or market, whichever is lower)	\$
2. Inventory at beginning of year	\$
3. Merchandise bought for sale	\$
4. Labor	\$
5. Material and supplies	\$
6. Other costs (explain in Schedule G)	\$
7. Total of lines 2 to 6	\$
8. Less inventory at end of year	\$
9. Net cost of goods sold (line 7 less line 8)	\$
10. Gross profit (line 1 less line 9)	\$

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not in line 4	\$
12. Interest on business indebtedness	\$
13. Taxes on business and business property	\$
14. Losses (explain in Schedule G)	\$
15. Bad debts arising from sales or services	\$
16. Depreciation, obsolescence and depletion (explain in Schedule F)	\$
17. Rent, repairs, and other expenses (explain in Schedule G)	\$
18. Amortization of emergency facilities (attach statement)	\$
19. Net operating loss deduction (attach statement)	\$
20. Total of lines 11 to 19	\$
21. Total of lines 9 and 20	\$
22. Net profit (or loss) (line 1 less line 21)	\$

65361.30

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	1000.70
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	4750.00

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc.	Amount,	\$
Name and address of estate or trust	Amount,	\$
Other sources (state nature)	Amount,	\$
Total		\$

Total income from above sources (Enter as item 4, page 1)

\$ 63001.40

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property <small>(If building, state character of whole constructed)</small>	2. Date acquired	3. Cost or other basis <small>(do not include land or other nondepreciable property)</small>	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
See attached schedule								

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	4. Column or Line No.	5. Explanation	6. Amount
see attached schedule					

James M. Fidler
1945 Income Tax—Los Angeles
Schedule C

Income :

Radio program	\$ 93,750.00
Syndicated column	14,540.91
Miscellaneous	75.00
	<hr/>
Total	\$108,365.91

Expense:

Office	\$ 4,795.44	
Automobile	369.06	
Social Security Taxes	621.66	
Publicity and entertainment	1,889.55	
Subscriptions and dues	189.65	
Columns and stories purchased	5,540.00	
Salaries	28,054.23	
Attorney fees	1,320.00	
Agent's commission	225.00	43,004.59
	<hr/>	<hr/>

Net \$ 65,361.32

Schedule G

Other Expense :

Apartment house manager	\$ 540.00
Gardner	110.00
Gas	306.92
Water and electricity	810.89
Laundry	326.55
Supplies	136.43
Telephone	84.38
Refrigeration service	72.00
Miscellaneous	60.51
Insurance	79.50
Taxes	435.00
	<hr/>
Total	\$ 2,962.18

Repairs :

Electric	\$ 29.90
Painting	818.00
Plumbing	89.61
Miscellaneous	66.55
	<hr/>

Total \$ 1,004.06

Schedule H

Contributions:

Youth of America	\$ 2.00	
Orphan's Home—Augusta, Ga.	543.28	
Crippled Children's Society	10.00	
American Legion Rehabilitation	5.00	
Kala-Ruth Service Club	2.00	
American Red Cross	100.00	
Hollywood Children's Hospital	10.00	
L. A. Community Chest	250.00	
Charity Show	11.51	
Christmas Seals	5.00	
Kenny Foundation	25.00	
		\$ 963.79

Schedule D (Form 1040)

SCHEDULE OF GAINS AND LOSSES

FROM SALES OR EXCHANGES OF (1) CAPITAL ASSETS AND (2) PROPERTY OTHER THAN CAPITAL ASSETS

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1945

Or fiscal year beginning _____, 1945, and ending _____, 1946

(See Instructions on other side)

Name of taxpayer James M. Fidler
Address 1759 N. Gower St., Hollywood 28, California

(1) CAPITAL ASSETS

1. Kind of property (if summary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	8. Gain or loss (column 4 plus column 5 and 6)	9. Gain or loss to be taken into account	
								Percentage	Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
Wed Depts									
Wm. K. Howard	12/5/44	12/31/45	.00	500.00			500.00	100	500.00
Boo Ross	5/31/38	"	.00	290.00			290.00	100	290.00
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)								100	\$ 790.00

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS									
Normal Res.	1927	7/28/45	56652.35	56865.25			212.88	50	.00
Ches. & Ohio	6/6/44	12/31/45	1008.69	9171.78			1836.91	50	918.45
Gen. Elec	1/2/42	12/31/45	4664.65	2920.05			1744.60	50	872.30
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)								50	\$ 1790.75

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from column 18, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary		
		(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss	
Total net short-term capital gain or loss	\$	\$	\$ 790.00	\$	\$	\$	\$ 790.00	
Total net long-term capital gain or loss	\$	\$ 1790.75	\$	\$	\$	\$ 1790.75	\$	
Net gain in column 5, lines 1 and 2. (Enter on line 1, Schedule D, page 2, Form 1040)							\$ 1000.75	
Net loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 2, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 4, Form 1040, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest.)								\$

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss, and line 9, page 3, Form 1040, exceeds \$16,000

Net income (line 3, page 3, Form 1040)	\$ 60003.50	10. Surtax on line 9. (See Surtax Table in Form 1040 Instructions)	\$ 32822.06
Excess of net long-term capital gain over net short-term capital loss (line 2, column 3 (a), less line 1, column 5 (b), of summary above)	1000.75	11. Partial tax (line 6 plus line 10)	\$ 34577.14
Ordinary net income (line 1 less line 2)	\$ 59002.75	12. 50% of line 2	500.88
Less: Normal-tax exemption (line 4, page 3, Form 1040)	500.00	13. Alternative tax (line 11 plus line 12)	\$ 35077.52
Balance subject to normal tax. (If partially tax-exempt interest is included in line 3 above, see Tax Computation Instructions on page 4 of Form 1040 Instructions)	\$ 58502.75	14. Total normal tax and surtax (line 6 plus line 10, page 3, Form 1040)	\$ 35357.73
Normal tax (3% of line 5)	\$ 1755.08	15. Tax liability (line 13 or line 14, whichever is the lesser). (Enter on line 11, page 3, Form 1040)	\$ 35077.52
Ordinary net income (line 3, above)	\$ 59002.75		
Less: Surtax exemptions (line 8, page 3, Form 1040)	1000.00		
Balance (surtax net income)	\$ 58002.75		

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
Seelig Library of books and MS.	7/26/37	250.00	5000.00			4750.00
Total net gain (or loss) (enter on line 2, Schedule D, page 2, Form 1040)						\$ 4750.00

If any item in this schedule was acquired by you otherwise than by purchase, attach a statement explaining how acquired.

4F

Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount	
Contributions	see attached schedule	\$	
	Allowable Contributions (not in excess of 15 percent of item 5, page 1)	\$	963.79
Interest	Total Interest	\$	
	Real Estate and Personal Property (County)	\$	507.09
Taxes	Unemployment Insurance		15.00
	State Income Tax		2805.28
	Total Taxes		3227.37
Losses from fire, storm, shipwreck, or other casualty, or theft.	Total Allowable Losses (not compensated by insurance or otherwise)	\$	
	Net Expenses (not compensated by insurance or otherwise)	\$	
Medical and dental expenses	Enter 5 percent of item 5, page 1, and subtract from Net Expenses	\$	
	Allowable Medical and Dental Expenses. See Instruction for limitation	\$	
Miscellaneous (See Instructions)	Alimony		9600.00
	Total Miscellaneous Deductions		9600.00
TOTAL DEDUCTIONS		\$	13791.16

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	\$	73794.66
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)		13791.16
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$	60003.50
4. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions)		500.00
5. Subtract line 4 from line 3. Enter the difference here. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	\$	59503.50
6. Enter here 3 percent of line 5. This is your Normal Tax. (Figure your Surtax below and enter in line 10)	\$	1785.11
7. Copy the figure you entered on line 3, above	\$	60003.50
8. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)		1000.00
9. Subtract line 8 from line 7. Enter the difference here. This is your Surtax Net Income	\$	59003.50
10. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 9. Enter the amount here		33572.62
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)	\$	35077.52
If you used the \$500 standard deduction in line 2, disregard lines 12, 13, and 14, and copy on line 15 the same figure you entered on line 11		
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$	
13. Enter here any income tax paid at source on tax-free covenant bond interest	\$	
14. Add the figures on lines 12 and 13 and enter the total here	\$	
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax	\$	35077.52

6F

RESPONDENT'S EXHIBIT G

Admitted in evidence February 5, 1952

47. Any balance of tax for filing out return.

FORM 1040 Treasury Department Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1946

3056288 1946

at fiscal year beginning 1946, and ending 1947

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends,

Do not write in these spaces

File Code 916

District 8-Calif

THE TAX COURT OF THE U. S. DIV. 11 DOCKET # 7946 ADMITTED IN EVIDENCE Los Angeles, Calif. FEB 5 - 1952

Name JAMES M. FIDLER (PLEASE PRINT. If this return is for a husband and wife, use both names.) ADDRESS 1759 NO. COWER STREET (PLEASE PRINT. Street and number of rural route.) HOLLYWOOD 28 LOS ANGELES CALIFORNIA (City or town, postal zone number) (County) (State)



EXHIBIT G MAR 15 1947

Occupation Commentator & Columnist Social Security No.

List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instruction 1) with 1946 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Table with columns: Name (please print), Relationship, Name (please print), Relationship. Entries: James M. Fidler (self), Bobba Fidler (daughter).

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Table with columns: Prior Employer's Name, Where Employed (City and State), Amount. Includes entry for \$1,041.00.

- 3. Enter here the total amount of your dividends... 1,041 00
4. Enter here the total amount of your interest... 28 18
5. If you received any other income, give details on page 2 and enter the total here... 69,466 51
6. Add amounts in items 2, 3, 4, and 5, and enter the total here... 70,535 69

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

- 7. Enter your tax from table on page 4, or from line 12, page 3... 35,711 11
8. How much have you paid on your 1946 income tax? (A) By withholding from your wages... 32,715 87 (B) By payments on 1946 Declaration of Estimated Tax... 32,715 87
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here... 2,995 24
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here...

Your Exemptions

Your Income

How to Figure Your Tax

Tax Due or Refund

If you filed a return for a prior year, what was the latest year? 1945

To which Collector's office was it sent? Los Angeles To which Collector's office did you pay amount claimed in item 8 (B), above? Los Angeles

Is your wife (or husband) making a separate return for 1946? If "Yes," write below Name of wife (or husband)

Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief it is true, correct, and complete. Glenn Brownfield (Signature) 3/1/47 (Date) Glenn Brownfield

James M. Fidler (Signature) (Date)

901 Financial Center Bldg., Los Angeles 14 Trinity 4171

(If this is a joint return of husband and wife, it must be signed by both)

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in).....	\$		4. Total amount received this year.....	\$	
2. Amount received tax-free in prior years.....			5. Excess, if any, of line 4 over line 3.....		
3. Remainder of your cost (line 1 less line 2).....	\$		6. Enter line 5, or 3 percent of line 1, whichever is greater (Amount separate deducted for each different annuity or pension)	\$	

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (subject to Schedule F)	4. Repairs (subject to Schedule G)	5. Other expenses (subject to Schedule G)	
Apartment House	\$ 6,557 50	\$ 1,264 40	\$ 205 69	\$ 4,108 32	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5).....	\$ 6,557 50	\$ 1,264 40	\$ 205 69	\$ 4,108 34	979 07

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

(State (1) nature of business; (2) business name

1. Total receipts.....	See SCHEDULE "C" Attached	\$	
COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
(To be used where inventories are an income-determining factor) (Enter the letters "C" or "M" on lines 2 and 3 if inventories are valued at either cost, or cost or market, whichever is lower)		11. Salaries and wages not in line 4.....	\$
2. Inventory at beginning of year.....	\$	12. Interest on business indebtedness.....	
3. Merchandise bought for sale.....		13. Taxes on business and business property.....	
4. Labor.....		14. Losses (explain in Schedule G).....	
5. Material and supplies.....		15. Bad debts arising from sales or services.....	
6. Other costs (explain in Schedule G).....		16. Depreciation, obsolescence and depletion (explain in Schedule F).....	
7. Total of lines 2 to 6.....	\$	17. Rent, repairs, and other expenses (explain in Schedule G).....	
8. Less inventory at end of year.....	\$	18. Amortization of emergency facilities (attach statement).....	
9. Net cost of goods sold (line 7 less line 8).....	\$	19. Net operating loss deduction (attach statement).....	
10. Gross profit (line 1 less line 9).....	\$	20. Total of lines 11 to 19.....	\$
		21. Total of lines 9 and 20.....	\$
		22. Net profit (or loss) (line 1 less line 21).....	\$ 66,311 76

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedules D).....	2,175 68
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D).....	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc.....	Amount,	\$	
2. Name and address of estate or trust.....	Amount,		
3. Other sources (state nature).....	Amount,		
4. Total.....			

Total income from above sources (Enter as item 5, page 1)..... \$ 69,466 51

Schedule F.—EXPLANATION OF REDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Amount fully depreciated to you at end of year	5. Depreciation allowed (to allowable) in prior years	6. Remaining book or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
Apartment House	1927	\$ 24357 00	\$	\$ 21,927 70	\$ 26429 30	40	21	\$ 1,264 40

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Section or Line No.	2. Explanation	3. Amount	4. Section or Line No.	5. Explanation	6. Amount
	see attached SCHEDULE	\$			\$

Schedule D (Form 1040)

SCHEDULE OF GAINS AND LOSSES
FROM SALES OR EXCHANGES OF (1) CAPITAL ASSETS AND (2) PROPERTY OTHER
THAN CAPITAL ASSETS

U. S. TREASURY DEPARTMENT
 Internal Revenue Service

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1946

Or fiscal year beginning _____, 1946, and ending _____, 1947

(See Instructions on other side)

Name of taxpayer JAMES M. FILLER
 Address 1759 NO. GOWER STREET, HOLLYWOOD 28, CALIFORNIA

(1) CAPITAL ASSETS

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired <i>Mo. Day Year</i>	3. Date sold <i>Mo. Day Year</i>	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	8. Gain or loss (column 4 plus column 7 less the sum of columns 5 and 6)	9. Percentage	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
			\$	\$	\$	\$	\$	100	\$
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									\$

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS									
100 Decca	8/8/44	5/14/46	7311 31	2959 94			4351 37	50	\$ 2175 68
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									\$ 2175 68

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from columns 10, above		4. Net gain or loss to be taken into account from partnerships and common trust funds		5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary	
		(a) Gain	(b) Loss	(c) Gain	(d) Loss	(e) Gain	(f) Loss
1. Total net short-term capital gain or loss	\$	\$	\$	\$	\$	\$	\$
2. Total net long-term capital gain or loss	\$ 2175 68	\$	\$	\$	\$	\$ 2175 68	\$
3. Net gain in column 5, lines 1 and 2. (Enter on line 1, Schedule D, page 2, Form 1040)						\$ 2175 68	XXXXXX
4. Net loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 2, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 4, Form 1040, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest)							XXXXXX

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss, and line 5, page 3, Form 1040, exceeds \$18,000

1. Net income (line 3, page 3, Form 1040)	\$ 65,900 75	6. Combined tentative normal tax and surtax on amount on line 5. (See Tax Computation Instructions on page 4 of Form 1040 Instructions)	\$ 36,445 55
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), less line 1, column 5 (b), of summary above)	2,175 68	7. Less: 5 percent of line 6	1,822 28
3. Ordinary net income (line 1 less line 2)	\$ 63,725 07	8. Partial tax (line 6 less line 7)	\$ 34,623 27
4. Less: Exemptions (line 4, page 3, Form 1040)	1,000 00	9. 50 percent of line 2	1,087 84
5. Balance	\$ 62,725 07	10. Alternative tax (line 8 plus line 9)	\$ 35,711 11
		11. Total normal tax and surtax (line 8, page 3, Form 1040)	\$ 36,235 46
		12. Tax liability (line 10 or line 11, whichever is the lesser). (Enter on line 8, page 3, Form 1040)	\$ 35,711 11

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
		\$	\$	\$	\$	\$
Total net gain (or loss) (enter on line 2, Schedule D, page 2, Form 1040)						\$

If any item in this schedule was acquired by you otherwise than by purchase, attach a statement explaining how acquired.

James M. Fidler
1946 Income Tax—Los Angeles, Calif.
Schedule "C"

Income:

Radio program	\$ 96,800.00
Syndicated column	11,800.00
Dell Publishing Company	4,200.00
Guest—Radio program	500.00
	\$113,300.00
Total	

Expense:

Office	\$ 3,866.52
Auto	262.77
Social Security Taxes	907.18
Publicity and promotion	1,273.54
Travel expense—Guest appearances ..	553.84
Subscriptions	190.43
Insurance—Libel, Workmen's Comp., etc.	944.79
Columns and stories purchased	4,107.50
Salaries	33,456.67
Attorney fees	1,425.00
	46,988.24
Total	
Net from business	\$ 66,311.76

Schedule "H"

Contributions:

Red Cross	\$ 100.00
Community Chest	250.00
Augusta, Georgia, Children's Home ..	200.00
Children's Home Society	10.00
Children's Hospital	25.00
Christmas Seal Fund	10.00
	595.00
Total	\$ 595.00

Schedule "G"

Other Expenses:

Manager	\$	565.00
Gardner		140.00
Gas		355.84
Electricity		872.18
Laundry		291.64
Supplies		10.13
Telephone		109.68
Refrigeration Service		27.52
Dishes, linoleum, linens, etc. (Replacements)		903.01
City permits and taxes		680.44
Insurance		152.90
		<hr/>
Total	\$	4,108.34

Repairs:

Plumbing	\$	119.27
Electric		33.14
Mattresses		25.38
Miscellaneous		27.90
		<hr/>
Total	\$	205.69

Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
 (2) Your total income is \$4,000 or more and you claim the \$900 standard deduction.
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.		Amount
Contributions	See SCHEDULE "H" attached	
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)	\$ 595 00
Interest	Security First National Bank	497 37
	Total Interest	497 37
Taxes	California State Income Tax	2,536 06
	Real Estate & Personal Prop. County Tax	775 51
	Total Taxes	3,311 57
Losses from fire, storm, shipwreck, or other casualty, or theft.		
	Total Allowable Losses (not compensated by insurance or otherwise)	
Medical and dental expenses	Net Expenses (not compensated by insurance or otherwise)	
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses. Allowable Medical and Dental Expenses. See Instruction for limitation.	
Miscellaneous (See Instructions)	Alimony	9,600 00
	Total Miscellaneous Deductions	9,600 00
TOTAL DEDUCTIONS		\$ 14,003 94

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	\$ 79,904 69	X
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)	14,003 94	
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 65,900 75	✓
4. Enter your exemptions (\$500 for each person whose name is listed in item 1, page 1)	1,000 00	
5. Subtract line 4 from line 3. Enter the difference here	\$ 64,900 75	✓
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 3 above includes partially tax-exempt interest, see Tax Computation Instructions)	\$ 38,142 59	✓
	1,907 13	✓
7. Enter here 5 percent of amount entered on line 6		
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)	\$ 36,235 46	✓
IF YOU USED THE \$900 STANDARD DEDUCTION IN LINE 2, SUBREGARD LINES 4, 10, AND 11, AND COPY ON LINE 12 THE SAME FIGURE YOU ENTERED ON LINE 4.		
9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$	
10. Enter here any income tax paid at source on tax-free covenant bond interest		
11. Add the figures on lines 9 and 10 and enter the total here	\$	
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax		

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Contents of Record on Review" in the proceeding before The Tax Court of the United States entitled "James M. Fidler, Petitioner, v. Commissioner of Internal Revenue, Respondent, Docket No. 27910" and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of January, 1954.

[Seal]

/s/ VICTOR S. MERSCH,

Clerk, The Tax Court
of the United States.

[Endorsed]: No. 14204. United States Court of Appeals for the Ninth Circuit. James M. Fidler, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed January 18, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Case No. 14,204

JAMES M. FIDLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD TO BE PRINTED

Comes now James M. Fidler, the petitioner herein, by his counsel, and states that the following are the points on which he intends to rely in connection with his petition for a review by the above-entitled Court of the decision of The Tax Court of the United States rendered on September 29, 1953:

1. The Tax Court erred in deciding that payments in the amounts of \$9,000, \$9,600 and \$9,600 made by petitioner to his divorced wife during the years 1944, 1945 and 1946 constituted "installment payments" within the meaning of Section 22(k) of the Internal Revenue Code and were not deductible by petitioner under the provisions of Section 23(u) of the Internal Revenue Code.

2. The Tax Court erred in deciding that the loss sustained by petitioner in the calendar year 1945 in the amount of \$4,750 from the sale of books and manuscripts constituted a loss from the sale of

capital assets held for more than six months and subject to the provisions of Section 117(b) and (d) of the Internal Revenue Code and in failing to decide that the loss was an ordinary business loss deductible in full under the provisions of Section 23(e).

3. The Tax Court erred in entering its decision wherein it ordered and decided that there are deficiencies in income tax of petitioner as follows:

Year	Deficiency
1944	\$ 7,316.60
1945	10,293.79
1946	6,992.74

Petitioner states that the entire record is material to the consideration of his petition for review, and therefore hereby designates for printing the entire certified transcript of record which the Clerk of The Tax Court of the United States has caused to be filed in the above-entitled Court.

Dated this 22nd day of January, 1954.

/s/ RAYMOND C. SANDLER,

/s/ NELSON ROSEN,

Counsel for Petitioner,

James M. Fidler.

[Endorsed]: Filed January 23, 1954, U.S.C.A.